आरक्षण की, तो सभापति जी, मैं इस बात को रेखांकित करना चाहूंगा कि लोकल बॉडीज और पंचायत के इलेक्शन में महिलाओं के आरक्षण की व्यवस्था हमारे दिवंगत नेता श्री राजीव गांधी जी की पहल पर प्रारंभ हुई थी। इसी प्रकार की व्यवस्था के बारे में मैं स्पष्ट रूप में इस सदन में यह कहना चाहता हूं कि हमारी नेता श्रीमती सोनिया गांधी जी की पहल पर महिलाओं के आरक्षण की व्यवस्था विधान सभा और लोक सभा में भी जारी की जाएगी। इस बात का उल्लेख जहां यू.पी.ए. के घोषणा पत्र में है, वहीं कांग्रेस पार्टी भी इस बात के लिए वचनबद्ध और कटिबद्ध है। ...(व्यवधान)..

श्रीमती सरला माहेश्वरी :इस सत्र में लाएंगे या नहीं? ...(व्यवधान).. इस सत्र में ले आइए।

श्री सभपति : आप छोडिए। सारी महिलाएं इसके पक्ष में है, यह मान लिया गया है ...(व्यवधान)... बैठ जाइए।

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STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE PREVENTION OF TERRORISM (REPEAL) ORDINANCE, 2004 (No. 1 OF 2004)

AND

PREVENTION OF TERRORISM (REPEAL) BILL, 2004

AND

STATUTORY RESOLUTION

SEEKING DISAPPROVAL OF THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ORDINANCE, 2004 (No. 2 OF 2004)

AND

UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT BILL, 2004

डा. मुरली मनोहर जोशी (उत्तर प्रदेश) : सभापति जी, मैं यह संकल्प प्रस्तुत करता हूं:

"कि यह सभा राष्ट्रपति द्वारा 21 सितबर, 2004 को प्रख्यापित आंतकवाद निवारण (निरसन) अध्यादेश, 2004 (2004 का संख्याकं 1) का निरनुमोदन करती है"।

महोदय, मैं यह भी संकल्प प्रस्तुत करता हूं-

कि यह सभी राष्ट्रपति द्वारा 21 सितबर,2004 को प्रख्यापित विधि विरूद्ध क्रियाकलाप (निवारण) संशोधन अध्यादेश, 2004 (2004 का संख्यांक2) का निरनुमोदन करती है"।

सभापति जी, एक बहुत ही महत्वपूर्ण प्रश्न पर आपकी आज्ञा से मैं इस सदन के समक्ष खडा हुआ हूं। आज एक विधेयक, जो पिछली बार एक अध्यादेश के द्वारा जारी किया गया था, जिसे पारित करने के लिए यहां प्रस्तुत किया गया है, मैं इस विधेयक का विरोध करता हूं। यह एक बहुत ही आश्चर्यजनक बात है कि जिस समय इस देश में आतंकवादी गतिविधियां बढ़ रही हों और जब कल हमारे देश के प्रतिरक्षा मंत्री ने स्वंय इस बात को पुष्ट किया हो कि नवम्बर माह में आतंकवादी गतिविधियां कश्मीर क्षेत्र में भारी रूप से बढ़ी है और जब उन्होने यह कहा हो कि पाकिस्तान के क्षेत्र में भारत की सीमा के पास 67 कैम्प और 32 लॉन्चर पैड्स बराबर काम कर रहे है.... निरंतर जम्मू-कश्मीर क्षेत्र में ऐसी घटनाएं हो रही है कि जिनमें हमारे फौजी जवानों को ही नहीं, बल्कि हमारे अफसरों तक को अपनी जान से हाथ धोना पड़ा है। हाल ही में ऐसी घटनाएं हुई है, में उन घटनाओं को ब्योरा विस्तार से सदन के समक्ष नहीं रखना चाहता हूं, क्योकि उनके बारे में सबको मालूम है, वे घटनाएं प्रकाशित है। जब कश्मीर क्षेत्र में, जम्मू क्षेत्र में आतंकवादी गतिविधियां बढ़ रही हो, समाचारपत्र यह कहते हों, जब वहां के अनेक सांसद और नेता स्वंय प्रधानमंत्री से मिलकर जम्मू और डोडा की अभावह स्थिति के बारे में प्रतिवेदन देने आए हों और जब ऐसी स्थिति पैदा की जा रही हो कि जम्मू और डोडा क्षेत्र से वहां की जनता पलायन करने के लिए चिंतित हो रही हों, उत्सुक हो रही है और यह कह रही हो कि स्थिति इतनी बिगड़ रही है कि हमारे लिए यहां रहना कठिन है, हमें यहां से पलायन करना पडेगा, यह तो एक प्रकार से वही स्थिति लाई जा रही है जैसे पहले कश्मीर घाटी में पंडितों को विवश करके पलायन करने के लिए मजबूर किया गया था। ऐसी स्थिति में मैं नहीं समझता कि ऐसे किसी विधेयक को निरस्त करना चाहिए। ऐसी स्थिति में "पोटा" जैसे कानून को बनाने के स्थान पर, उसको सदृढ़ करने के स्थान परश उसको समाप्त करने की बात की जा रही हो, और वह भी एक अध्यादेश के द्वार की जा रही हो, यह बहुत ही अनुचित बात है।

सभापति महोदय, इतना ही नहीं, पिछले दिनों मे जो उत्तर-पूर्वी क्षेत्र है, वहां भी आतंकवादी गतिविधियां बहुत बढ़ी है और इस तरह से बढ़ी है कि जिसके बारे में हमारे देश की सुरक्षा एजेंसियों ने जाचं करने वाली एजेंसियों ने यहां तक कहा है,जो असम के चीफ सेक्रेटरी है, श्री राजकोवा who is the administrative head of the three-tier unified command taking on insurgence in Assam mentioned, cross border terrorism, narcotics trade, arms smuggling and movement of militants as the major problems of the North East.

He said, "arms were flowing surreptitiously to the region through Myanmar and Bangladesh and some of the consignments originated even in China. He also said that intelligence has sufficient evidence to prove that the ISI was trying to attack vital installations in the North East. The ISI is also facilitating cross border movement of militant leaders."

इस प्रकार से इन घटनाओं में वृद्धि हो रही है। यह सिर्फ उन्होने ही नहीं कहा है, बल्कि होम मिनिस्ट्री के बारे में अखबारों मे ये खबरें आई है, The Home Ministry is learnt to have told the West Bengal Government to keep a strict vigil on the Siliguri corrridor increasingly being used to smuggle in arms and funds from Bangladesh and Nepal where the ISI is known to have well entrenched operatives. Sources pointed out that the Tripura basedATTF and the NLFT had 42 camps and shelter points in Bangladesh. Reports suggest that militants had heavily invested in business activities in Bangladesh. The ATTF was operating beauty parlours. ULFA leader had interest in hotels, travellers, and transport buses. यानी आतंकवाद केवल मिलिटेंसी के रूप में ही नहीं आ रहा है, बल्कि उसने तरह-तरह से अपने फन फैलाए हैIthis hydra-headed demon of terrorism was spreading all flanks in various dicesवहां आप यह कर रहे है कि बजाय इसके कि आप उस कानून को और सदृढ़ करते,अगर उसमें कोई कमजोरी थी तो उसे दूर करते, आप उसको निरस्त कर रहे है। मैं समझता हू कि यह देश की आंतरिक सुरक्षा के साथ भारी मजाक है और यह देश के हित में नही है। दरअसल आपको आंतरिक सुरक्षा और उसकी कठिनाइयों का या तो आभास नहीं है,यदि आभास है भी तो आप केवल राजनीतिक उद्देश्यों के कारण इस विधेयक को यहां लाए है। यह मैं इसलिए कहता हूं क्योंकि एक खबर यह भी आई थी कि- Assam मंत्री, secretary, editor, held for ULFA links. यह खबर कहती है Guwahati, October 12: The arrest of the Personal Secretary of an Assam Cabinet Minister and the Editor of a language daily, in which another Cabinet Minister is alleged to have an interest as part of the overall police crackdown against those with links to the banned United Liberation Front of Assam had led to acute embarrassment for the State's Congress Government, headed by Mr. Tarun Gogoi. Mr. Gogoi, acknowledging that the arrests had taken place told reporters that the police had taken them into custody only on suspicion. So it would not be correct to jump to any final conclusion". But he added, 'The police was investigating if something is found against them. The police on Monday picked up Mr. Khasru Ahmed Burgohain,

Personal Secretary of Plains Tribes Welfare Minister, *Bharat Nara* in connection with a blast at Dhimaji on August 15." *...(Interruptions)...*

आप यह देखें *.....(Interruptions)...*

SHRI A. VIJAYARAGHAVAN (Kerala): Is he moving the Resolution to oppose this Bill?

DR. MURLI MANOHAR JOSHI: I am not yielding. *...(Interruptions)...*

SHRI A. VIJAYARAGHAVAN: Sir, how much time will he take? *...(Intemiptions)...* There is no such convention. Of course, he has to move the Resolution. Is it a full-fledged discussion? That should be made clear. Is this time reduced from the total time of the BJP'S allotted time?

DR. MURLI MANOHAR JOSHI: I am notyiedling. *...(Interruptions)...*

श्री सभापति :नहीं, खत्म नहीं कर रहे है। ....(व्यवधान)..

श्री नीलोत्पल बसु (पश्चिमी बंगाल) **:** हम लोगों ने बिजनेस एडवाइजरी कमेटी में यह तय किया था कि यह जो रिजोल्यूशन और जो डिसकशन है बिल के ऊपर, दोनों हम इकट्ठा लेंगे और टाइम जो चार घटें का डिस्ट्रीब्यूशन हुआ था वह भी दोनों का ...(व्यवधान)...

डा. मुरली मनोहर जोशी :सभापति जी मुझे इजाजत दें। ...(व्यवधान)...

श्री नीलोत्पल बसु :अगर जोशी जी, मतलब पूरे चार घंटे के अन्दर बीजेपी को जितना टाइम मिला है उसी के तहत वे बोल रहे है।

डा. मुरली मनोहर जोशी : 6 घंटे है।

श्री नीलोत्पल बसु:मैं इसके ऊपर आपका क्लेरिफिकेशन मांगता हूं। ...(व्यवधान)...

डा. मुरली मनोहर जोशी :मैं आपका संरक्षण चाहता हूं। मैं एक सांसद के रूप में अपने अधिकार का प्रयोग कर रहा हूं कि किसी भी विधेयक को प्रस्तुत करते समय उसका विरोध किया जा सके।

श्री सभापति :नहीं-नहीं। मेरी बात सुनिए जोशी जी, इस विधेयक पर आप बोलना चाहते है?

मुरली मनोहर जोशी :जी नहीं, मैं इस विधेयक के विरोध करने का कारण बता रहा हूं। कितनी गंभीर स्थिति है और उसमें इस प्रकार से ये कर रहे है। मेरा इसमें स्टैच्युटरी मोशन है साहब। ...(व्यवधान)... मैं इस पर स्पेशली नहीं बोल रहा हूं। मेरा तो डिस्एप्रूवल का मोशन है, उस पर बोल रहा हूं। ...(व्यवधान)...

श्रीमती सुषमा स्वराज (उत्तरांचल) **:**इनका डिसएप्रूवल का मोशन है उस पर बोल रहे है, अपने नाम से उन्होने डिसएप्रूवल का मोशन दिया हुआ है। ...(व्यवधान)...

SHRI A. VIJAYARAGHAVAN. If so, there should be some time-limit on that *...(Interruptions)...* that is why there is a discussion.

श्री नीलोत्पल बसु :सर, हमारा भी हाउस में कुछ अनुभव है। ऐसे थोड़े ही होता है। ...(व्यवधान)...

श्री सभापति :मेरी सुन लीजिए, एक मिनट सुनिए। यह इनका डिसएप्रूवल का नोटिस है। यह बिल को लाने के बाद मे बोल सकते है, पहले बोलने दीजिए, क्या फर्क पड़ता है। ...(व्यवधान)..

SHRI A. VIJAYARAGHAVAN: There should be a time-limit meant for that. *...(Interruptions)...*

डा. मुरली मनोहर जोशी : सभापति जी, नियम के अनुसार जब भी कोई बिल प्रस्तुत होता है, विधेयक प्रस्तुत होता है,यदि कोई ऑडिनेंस ऐसे प्रस्तुत होता है बिल के रूप में, तो उसका या किसी भी बिल का विरोध करने के लिए एक स्टैच्युटरी अधिकार मुझे है।

श्री सभापति : वह तो दिया है ना आपको।

डा. मुरली मनोहर जोशी :मैं सांसद के नाते उस अधिकार का प्रयोग कर रहा हूं। ..(व्यवधान)...

SHRI A VIJAYARAGHAVAN: There is a time-limit forthat; *...(Interruptions)...* How much time will he take? No, there is no such convention. You cannot take one hour. You can take five minutes or ten minutes.

श्री नीलोत्पल बसु :आप सांसद है, चार घंटे का टाइम है ...(व्यवधान)..

डा. मुरली मनोहर जोशी :उसका निर्धारण आप नहीं कर सकते। ...(व्यवधान)...

श्री सभापति : बोलिए । देखिए, डिसएप्रूवल के मामले में ...(व्यवधान)..। बोलिए, बोलिए। टाइम जाएगा उसमें से।

डा. मुरली मनोहर जोशी :सर, मै आपको यह बताना चाहता हूं कि आज स्थिति यह है कि 150 से अधिक रेलवे स्टेशन नक्सल थ्रेट मे अकेले झारखंड में है। सारे आंध्र में इस प्रकार के थ्रेट बहुत दिनों से रहे है और मुझे यह आश्चर्य होता है कि असम और आन्ध्र के अन्दर ही किस प्रकार से इन आतंकवादियों के साथ वहां की सत्ताधारी पार्टी ने जो इस समय है समझौते किये है। यह कैसा मजाक हो रहा है कि पी.डब्ल्यू.जी. के लोग या नक्सल ग्रुप के जो आतंकवादी है, उनको हथियार लेकर आने की इजाजत दी जाए बातचीत करने के लिए। यह आतंकवाद को रोकना है या

आतंकवाद को खुली छूट देना है। यह देश की वर्तमान आंतरिक सुरक्षा की स्थिति के साथ खिलवाड़ किया जा रहा है और तारीफ यह है कि एक तरफ से बिल को निरस्त करते है और दूसरी तरफ से एक दूसरा कानून ला रहे है। उस पर मैं आज अभी नहीं बोल रहा हूं,लेकिन मैं आपसे यह कहना चाहता हूं कि यह कहा गया है कि यह बिल इसलिए लाया गया कि पोटा के अंदर कुछ बहुत ही खमियां थीं और उसके दुरूपयोग की संभावना थी। मुझे यह बताना है सदन को कि उन दुरूपयोगों को रोकने के लिए हमारी सरकार ने पहले ही काफी प्रावधान किये थे और उसके बाद भी यह व्यवस्था थी उस बिल में कि साल भर के बाद उसका सारा फिर से पुनरीक्षण होगा और उसके अंदर अगर कोई और कमजोरी होगी तो उसे भी दूर किया जाएगा। आतंकवाद से लड़ने के लिए आज उन एजेंसियों के लिए मजबूत कानून की, मजबूत अधिकारो की जरूरत है। जो लोग देश पर अपना सर्वस्त्र न्योछावर कर के हमारी सुरक्षा कर रहे है, उन को मजबूत करने की जरूरत है न कि उन को कमजोर करने की जरूरत है। महोदय, इसलिए मैं आप से निवेदन करना चाहता हूं और सदन से निवेदन करना चाहता हू कि इस ऑडिनेंस को, जोकि विधेयक के रूप में यहां लाया जा रहा है, इस को प्रस्तुत होने से रोका जाए। इसे सदन के सामने लाने की जरूरत नहीं है।

श्री सभापति : आप बोलेंगी?

श्रीमती सुषमा स्वराज :जी, मैं एक निवेदन करना चाहूंगी। इस से पहले कि वे मूव करें, मुझे निवेदन करना है।

श्री सभापति :मूव करने से पहले कैसे निवेदन करेंगी?

श्रीमती सुषमा स्वराज :मूव करने से पहले निवेदन करना है तभी तो आप उस पर रूलिंग देंगे। ...(व्यवधान)...

श्री सभापति :आप ने सलेक्ट कमेटी को भेजने के लिए मोशन दिया है। ...(व्यवधान)..

श्री नीलोत्पल बसु :महोदय, अगर इस तरह भाषण देने का किसी का अधिकार है तो मैं भी जब मर्जी उठकर बोलने लगूंगा।

श्री सभापति :आप को भी बोलने की पूरी इजाजत होगी। आप इस बारे में संदेह न करें।

SHRI V. NARAYANASAMY (Pondicherry): Sir, under which rule she is speaking?

MR. CHAIRMAN: Under Rule 25. You read it if you want ...*(Interruptions)*...

बसु जी, आप एक मिनिट मेरी बात सुन लीजिए। इन्होने सलैक्ट कमेटी के लिए मोशन मूव किया है। वह उस पर बोल रही है।

श्री नीलोत्पल बसु :डिबेट के टाइम में बोल लें। अभी तो मंत्री जी ने मोशन मूव नहीं किया है, तो किस रूल के तहत बोलेंगी?

श्री सभापति :पहले उन को मूव कर लेने दीजिए।

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ. V. PATIL): Sir, I beg to move:

"That the Bill to repeal the Prevention of Terrorism Act, 2002, as passed by Lok Sabha, be taken into consideration."

Sir, I also move:

"Ttiatthe Bill further to amend the Unlawful Activities (Prevention) Act, 1967, as passed by Lok Sabha, be taken into consideration."

The questions were propsoed

श्रीमती सुषमा स्वराज :धन्यवाद, सभापति जी। सभापति जी, आज का कार्य-सूची में दो विधेयक और दो अध्यादेशों के निरनुमोदन करने वाले संकल्प लगे है। चूंकि इन पर एक साथ चर्चा होनी है, इसलिए मैं चाहती थी कि मंत्री महोदय के प्रस्तुत करने से पहले मैं अपनी बात कह देती क्योंकि अगर मेरी मोशन आप स्वीकार कर लेते तो उन को विचार और पारण के लिए ये प्रस्ताव प्रसतुत नहीं करना पड़ता। लेकिन आप ने जैसा चाहा, आप ने उन को पहले प्रस्तुत करने का अधिकार दिया तो उन को उन्होने आप के सामने रखा है।

सभापति जी, यह सुखद संयोग है कि आज जो गृह मंत्री है, वे उस समय लोक सभा के स्पीकर थे जिस समय स्टेंडिग कमेटियों का सिस्टम प्रारंभ किया गया था। महोदय, मैं करीब से इस बात को जानती हूं क्योंकि जब ये स्टेंडिंग कमेटियां बन रही थीं, मैं उस पूरी चर्चा में भागीदार रही हूं। वे भावनात्मक रूप से इन स्टेंडिंग कमेटियों से कितने जुडें है, इस बात को शायद मुझ से ज्यादा कोई नहीं जानता। लोक सभा के स्पीकर के नाते भी और लोक सभा के विपक्ष के उप-नेता के नाते भी वह अपना यह मत एक बार नहीं अंसख्य बार, मैं जानबूझकर कह रही हूं कि असंख्य बार, अपना यह मत प्रकट कर चुके है कि नया बिल नहीं, अगर किसी एक बिल में किसी एक लाइन का भी संशोधन लाना है तो उसे स्टेंडिंग कमेटी को भेजा जाना चाहिए। शिवराज जी, मैं आपके शब्द दोहरा रही हूं, यह आप का अपना वाक्य है कि, नया बिल नहीं अगर किसी पुराने बिल में एक लाइन का संशोधन लाना हे तो भी उसे स्टेंडिंग कमेटी को भेजा जाना चाहिए। लेकिन मुझे समझ नहीं आता पता नहीं शायद यह सत्ता का दोष है कि जब हम लोगों की भूमिका बदल जाती है तो हम विपक्ष में कहीं हुई सारी बातें भूल जाते है।

SHRI SHIVRAJ V. PAUL: I humbly submit that I am being mis-quoted.

श्रीमती सुषमा स्वराज :सभापति जी, यह भी एक संयोग है कि यह बिल गृह मंत्रालय का है और वे स्वयं गृह मंत्री है और इस बिल को जोकि बहुत दूरगामी प्रभावों वाला बिल है, बहुत दूरगामी परिणामों वाला बिल है और महत्वपूर्ण बिल है, बिना स्टेंडिंग कमेटी को भेजे आप यहां लाए है। सभापति जी, जो पच्चीस संसदीय कमेटियां है, उनमे से आठ कमेटियां राज्य सभा में है। यह गृह मंत्रालय की कमेटी में जानेवाला बिल था और यह भी एक संयोग है कि गृह मंत्रालय की कमेटी में जानेवाला बिल था और यह भी एक संयोग है कि गृह मंत्रालय की स्टैंडिंग कमेटी की अध्यक्षा मैं हूं। यह बिल राज्य सभा में अगर आता, प्रस्तुत होता तो मैं सीधे आपसे निवेदन करती और कहती कि इसको आप स्टैडिंग कमेटी को रेफर करिए। लेकिन यह बिल लोक सभा में प्रस्तुत हुआ। मैं स्वयं जाकर लोक सभा अध्यक्ष से मिली और मैंने उनसे भी यह निवेदन किया कि यह बहुत महत्वपूर्ण बिल है। इसको स्टैंडिंग कमेटी को भेजना चाहिए। उन्होने कहा कि सत्र छोटा है और ऑडिनेंस रिप्लेस करने वाला बिल है। ...(व्यवधान)... यह बात कही जा सकती है सर, यह चैम्बर में हुई बात है। ...(व्यवधानद्ध...

श्री आनन्द शर्मा (हिमाचल प्रदेश) : व्यवस्था का प्रश्न है।

श्रीमती सुषमा स्वराज :यह चैम्बर मे की हुई बात है, यह कहीं जा सकती है। ...(व्यवधान).. सर, अगर हर चीज में यह होगा तो हम लोग बोल ही नहीं पायेंगे।

श्री आनन्द शर्मा : यह व्यवस्था का प्रश्न है। मैं ऐसे नहीं खड़ा हुआ हूं। सुषमा जी, एक तरफ स्टैडिंग कमेटी की अध्यक्षा होने के नाते, इस सदन में जो बात कहनी है, वह आपके समक्ष रख रही है। लोक सभा अध्यक्ष के चैम्बर में क्या चर्चा की, वह इस सदन में रखने का कोई औचित्य नहीं है।

श्रीमती सुषमा स्वराज :सर, चैम्बर की चर्चा प्रासंगिक है। ....(व्यवधान)..

श्री सभापति :शुरू करिए।

श्रीमती सुषमा स्वराज :लेकिन उन्होने चूकिं उस बात को स्वीकार नहीं किया और लोक सभा से बिल पारित हो गया। तो मैं नियम जानती हूं कि अगर एक सदन से बिल पारित हो कर दूसरे सदन में आए तो वह स्टैंडिंग कमेटी को नहीं भेजा जा सकता क्योंकि स्टैंडिंग कमेटी में दोनो सदनों के सदस्य होते है और वे सदस्य वहां वोट कर चुके है। इसलिए मैंने यहां के नियमों के मुताबिक, नियम 125 के अधीन, आपको मोशन दिया कि यह बिल सलेक्ट कमेटी को भेजा जाए।

सभापति जी, यह बिल बहुत दूरगामी परिणामों वाला बिल है। मैंने दो बार पहले भी कहा है। अभी लिए अनुमोदन संकल्प पर बोलते हुए इसके परिणामों की कुछ चर्चा डा. जोशी ने भी की है।

मैंने वहां भी यह कहा था कि हम लोग इस बिल पर शानिवार-रविवार को बैठकर सात दिन में रिपोर्ट दे सकते है। अब आपको राज्य सभा की सलेक्ट कमेटी का गठन करना है, आप जिसको भी उसमें चेयरमैन बनाएं। आप उसके साथ यह पाबंदी लगा सकते है कि चूंकि सत्र छोटा है इसलिए सात दिन के अन्दर-अन्दर वह कमेटी अपनी रिपोर्ट दे। क्योकि आप यह मानते है कि जब कमेटी में हम लोग बैठते है तो दलगत राजनीति से उपर उठकर बैठते है और बिल के एक-एक प्रावधान पर बहुत गंभीरता से विचार करते है। इसलिए मेरा आपसे विनम्र निवेदन है और मैं शिवराज जी से भी कहना चाहूंगी कि वे हमारी इस बात को स्वीकार करें। इस बिल को विचार और पारण के लिए अभी न रखें। इसीलिए मैं आपसे पहले बोलना चाहती थी, लेकिन आपने प्रस्तुत कर दिया तो फिर भी मेरा संशोधन है कि नियम 125 के अधीन इसको सलेक्ट कमेटी में भेंजे। आप कह दें तो कि सात दिन में रिपोर्ट करो। हम सात दिन में रिपोर्ट करके इसको यहां भेज देंगे और उसके बाद इस बिल के ऊपर चर्चा हो जाये और जो संशोधन हों उसके साथ यह लोक सभा में चला जाए और अगर देरी भी होती है तो सभापति जी, इस बात का भी प्रावधान है कि ऑर्डिनेंस रिप्रोमलगेट हो सकता है और उसके बाद बिल पर चर्चा हो सकती है। लेकिन मेरा आपसे भी निवेदन है और गृह मंत्री जी से भी निवेदन है कि जिस बात को वे स्वयं बहुत भावुकता से कहते रहे है कि बिलों की चर्चा कमेटी में होनी चाहिए, मै चाहूंगी कि इस बिल को आप सलेक्ट कमेटी को भेजें।

श्री नीलोत्पल बसु :सर, वह प्वाइंट। वह प्वाइंट सर। सर, सुरेश जी बोलने के पहले कहूंगा क्योंकि यह प्रोसिजरल मामला है। सर, यह बहुत स्वागत योग्य बात है कि इन्होने कमेटी, सलेक्ट कमेटी इसकी जो जरूरत है, इसके बारे में हमारे हाउस को दोबारा अवगत कराया। लेकिन सर, हम लोगों का भी हाउस में थोड़ा टाइम हो चुका है। इसीलिए पुराना प्रेसिडेंट हमको भी मालूम है। हाउस में हम भी देखा है। प्रसार भारती ऑर्डिनेंस पिछली सरकार लायी थी और वह ऑर्डिनेंस लाने के बाद उस समय जो प्रसार भारती का सी.ई.ओ. था, उसका रिमूवल हो गया था। लोक सभा से वह ऑर्डिनेंस पास हुआ फिर राज्य सभा में लाने के पहले यह ऑर्डिनेस राज्य सभा में लाया नहीं गया। क्यों नहीं लाया गया? क्योंकि तब तक वह जो काम था, प्रसार भारती के सी.ई.ओ. के रिमूवल का, वह हो गया और ...(व्यवधान)...

श्रीमती सुषमा स्वराज : सर, यह बिल्कुल गलत है। मैं उस समय आई.एड.बी मिनिस्टर थी। ...(व्यवधान)... सर बिल्कुल गलत बयानी कर रहे है। मैं आई.एड़.बी. मिनिस्टर थी इसलिए यहां नहीं लाया गया, क्योंकि राष्ट्रपति के यहां से साईन करके नहीं आया और सदन उठ गया। ये सदन को गुमराह कर रहे है। यह मेरा बिल नहीं था। ये बिल्कुल गलत कह रहे है। राष्ट्रपति के यहां से साईन हो कर के बिल नहीं आया और सदन उठ गया। इस कारण वह बिल यहां नहीं आया था वे गलत बयानी कर रहे है, ये गुमराह कर रहे है। ...(व्यवधान)..

श्री नीलोत्पल बसु :संसदीय प्रणाली में क्या सही है या गलत है, इसके बारे में इनसे भाषण सुनने के लिए हम तैयार नहीं है। ....(व्यवधान)

श्रीमती सुषमा स्वराज : सर, बिल्कुल गलत-बयानी कर रहे है यह। ...(व्यवधान)...

श्रीमती सभापति :आप बैठिए। बैठिए बसु जी, आप भी बैठिए। पचौरी जी, आप बोलिए। ...(व्यवधान)...

श्री नीलोत्पल बसु :सर, रिकॉर्डस से चेक कर लीजिए। रिकॉडर्स मंगवा लीजिए। ..(व्यवधान)..

SHRI V. NARAYANASAMY: Records will show *...{Interruptions)...*

श्री सभापति :पचौरी जी को बोलने दो। बोलिए, आप। ...(व्यवधान).. मैं देख लूंगा सारा।....(व्यवधान)...]

SHRIMATI SUSHMA SWARAJ: Don't mislead the House ... *{Interruptions)...*

SHRI NILOTPAL BASU: None of your colleagues will support you. Records will show who is right, who is wrong *...{Interruptions)...*

सर, आप और लीडर ऑफ द अपोजिशन आपस में बैठकर देख लीजिए। मैं खुली चुनौती देता हूं। मैं एक भी शब्द गलत बोला हूं, तो मैं छोड़ दूंगा हाऊस। ..(व्यवधान)..

श्री सभापति :ठीक है, आप बैठिए ।....(व्यवधान)...

श्रीमती सुषमा स्वराज :सर, मैं चुनौती स्वीकार करती हूं। यह बिल राष्ट्रपति जी के यहां से नहीं आया था, इसलिए यहां नहीं आ सका। ...(व्यवधान)...

कार्मिक लोक शिकायत और पेंशन मंत्रालय में राज्य मंत्री तथा संसदीय कार्य मंत्रालय में राज्य मंत्री (श्री सुरेश पचौरी) :आदरणीय सभापति महोदय, आदरणीय सुषमा जी ने सुखद संयोग शब्दों का प्रयोग करके अपनी बात की शुरूआत की, मै उसी से बढ़कर अपनी बात आगे बढाना चाहता हूं।

श्री सभापति :इस सुखद से ज्यादा और क्या संयोग होगा?

श्री सुरेश पचौरी :मान्यवर, यह सुखद संयोग नहीं है, विचित्र संयोग है कि आदरणीय सुषमा जी के कार्यकाल के दौरान जब ऑर्डिनेंस पिछले दरवाजे से जारी होते थे और हम यह कहते थे। ....(व्यवधान)..

श्री सभापति :अब इस विषय पर मत आओ। ...(व्यवधान)

श्री सुरेश पचौरी :मान्यवर, मैं शब्दश: प्रतिक्रिया व्यक्त करना चाहता हूं। ...(व्यवधान).. नहीं,चूंकि इन बातों का उल्लेख किया गया है। ...(व्यवधान)..

श्री एस.एस. अहलुवालिया (झारखंड) **:** सर, मंत्री जी को पिछले दरवाजे की बात नहीं करनी चाहिए। ...(व्यवधान).. यह पार्लियामेंटरी अफेयर्स मिनिस्टर है।

श्री सुरेश पचौरी :सर, मैं शब्दश**:** उत्तर देना चाहता हूं ...(व्यवधान)... इतना धैर्य और संयम आपको रखना चाहिए। .....(व्यवधान)...

श्री एस.एस. अहलुवालिया :सर, अध्यादेश जो होते है, उन पर राष्ट्रपति जी के हस्ताक्षर होते है। वे पिछले दरवाजे से नहीं आते। .....(व्यवधान)...

SHRI ARUN JAITLEY (Gujarat): You have promulgated seven Ordinances during the inter-Session period और मंत्री जी यह कह रहे है कि ये ऑर्डिनेंस पिछले दरवाजे से आए है ...(व्यवधान)....

श्री सुरोश पचौरी :सर, जब सुषमा जी अपनी बात कह रही थीं तो मैं भी शातिं से सुन रहा था। ..(व्यवधान)...

श्री एस.एस. अहलुवालिया :आप गलत शब्दों का प्रयोग मत करिए। राष्ट्रपति जी के हस्ताक्षर से अध्यादेश जारी होते है। इसमें कोई पिछले दरवाजे से नहीं होते।

श्री सुरेश पचौरी :सर, मैं बिल्कुल सही शब्दों का प्रयोग कर रहा हूं कोई असंसदीय शब्द नहीं बोला। अगर असंसदीय हो तो उसे विलोपित कर दीजिए।

श्री एस.एस. अहलुवालिया :आर्डिनेंस पिछले दरवाजे से कोई नहीं होता, सामने दरवाजे से होता है। ...(व्यवधान)..

श्री सभापति : आप बोलने दीजिए उन्हें। आप यह क्या कर रहे है?

श्री एस.एस. अहलुवालिया :सर, वह गलत शब्द बोल रहे है।

श्री सुरेश पचौरी :मैं कोई असंसदीय भाषा का प्रयोग नहीं कर रहा हूं।

श्री एस.एस. अहलुवालिया :आर्डिनेंस सामने के दरवाजे से होते है, कोई पिछले दरवाजे से नहीं होता। आज आप पिछला दरवाजा बोलेंगे, कल चोर दरवाजा बोलेंगे।

श्री सभापति :आप बोलने दीजिए, उन्हें।

श्री एस.एस. अहलुवालिया :नहीं, यह गलत शब्द बोल रहे है। सर, एक्सपंज करिए इसको।

श्री सभापति :नहीं, नहीं। इसमें एक्सपंज करने की बात नहीं है। ...(व्यवधान)... बोलिए, पचौरी जी।

श्री एस.एस. अहलुवालिया : आप मंत्री होकर ऐसा बोलेंगे। ...(व्यवधान).. यहां लॉ मिनिस्टर बैठे है। आप बताइए, क्या पिछले दरवाजे से आर्डिनेंस होता है?

श्री सुरेश पचौरी :सर, जब आर्डिनेंस एनडीए गवर्नमेंट के कार्यकाल में जारी होते थे और हम यह कहते थे कि इनको जल्दीबाजी से करने के पीछे क्या राज है? तो उस समय उसकी महत्ता को दर्शाया जाता था और जब यह कहा जाता था कि इसे स्टेंडिंग या सलेक्ट कमेटी को जाना चाहिए तो कुछ और तर्क, किसी और के द्वारा नहीं बल्कि संसदीय कार्य मत्री के रूप में आदरणीया सुषमा जी के द्वारा, दिया जाता था। मान्यवर, रूल 125, जो रूल्स ऑफ प्रोसीजर एंड कंडक्ट ऑफ बिजनेस का है, उसके तहत रेफरेन्स टू सलेक्ट कमेटी किया जाता है, जब कोई मोशन प्रस्तुत किया जाता है और जब कोई मोशन पास हो जाता है तो उसमें रूल 126 के तहत कार्रवाई आगे बढ़ती है। प्रश्न इस बात का उठता है सदन का, चाहे वह यह सदन हो या वह सदन हो, हमेशा या तो वह रूल्स से चलता है या परंपरा से चलता है। मान्यवर, मैं परंपरा का जिक्र करना चाहता हूं कि ऐसी अनेकों परंपराए रही है। कौल एंड शकधर की इस पुस्तक में पेज 591 में जिस बात का उल्लेख किया गया है, मैं उसको उद्धत करना चाहूंगा। जब एक हाउस से कोई बिल पास हो जाता है और दूसरे हाऊस में आए और यहां तक कि रूल 125 के तहत सलेक्ट कमेटी के लिए रेफरेन्स किया जाए तो आसंदी से दी गई व्यवस्था एक परंपरा का अंग बन गई है। उस व्यवस्था को मैं उद्धत करना चाहूंगा,जिसका उल्लेख "कोल एंड शकधर" के पेज 591 में किया गया है हिन्दू सक्सेशन बिल के तहत जब 27 अप्रैल, 1956 को राज्य सभा से एक बिल पास हो गया था और दूसरे सदन में गया था तथा रिफरेंस दिया गया था संलेक्ट कमेटी के तहत, उस समय यह व्यवस्था की गई थी ...(व्यवधान)....

श्री एस.एस. अहलुवालिया : पेज 556 भी पढ़िए। .....(व्यवधान)..

श्री सभापति : आप जबर्दस्ती बीच में क्यो टोक रहे है। ...(व्यवधान).. सरदार जी, आप बीच में मत टोकिए।

श्री एस.एस. अहलुवालिया :पेज 556 भी पढ़िए।

श्री सभापति :हां, वह भी पढ़ लेगे, यह भी पढ़ लेगें। बैठिए।

श्री सुरेश पचौरी :पेज 591 पढ़िए।

श्री एस.एस. अहलुवालिया :आप पेज 556 पढ़िए।

श्री सुरेश पचौरी :पेज 591 पढ़ लीजिए, कोई जरूरी नहीं है कि आप जो पेज बताएं, मैं उसे पढ़ूं। मैं पेज नं. 591 का जिक्र कर रहा हूं और 591 में इस बात का उल्लेख किया गया है कि – "Amendment for recommittal of the Bill to a Select or Joint Committee or for circulation of the Bill for eliciting opinion thereon are out of order."

आदरणीया सुषमा जी ने जो सलेक्ट कमेटी के लिए बात कहीं है, आसंदी से दी गई व्यवस्था के अनुसार अभी वह समयानुकूल भी नहीं है, न उचित है, क्योंकि इसमें एक तो समय कम है और कम है और दूसरा यह है कि जो बिल पास होना है, इसकी जो समयवधि है, तो आर्डिनेंस जारी किया गया है, वह 12 जनवरी, 2005 तक के लिए है। तो समयावधिप को मद्देनजर रखते हुए,बिल की महत्ता को मद्देनजर रखते हुए रूल की व्यवस्था को दृष्टिगत रखते हुए और पुरानी परम्परा को नजरअंदाज न करते हुए, यह आवश्यक हो गया है कि इस पर चर्चा की जाए और सारा सदन इसका समर्थन करे।

श्रीमती सुषमा स्वराज :सर, इन्होने परम्परा का जिक्र किया है।

श्री सभापति :बस हो गया है, अब मुझे बोलने दीजिए।

श्री सुरेश पचौरी :मैं ओर भी परम्परा बता दूंगा।

श्री सभापति :मैं बोल रहा हूं, आप छोड़िए परम्परा को।

श्रीमती सुषमा स्वराज :इन्होने जो परम्परा का जिक्र किया है, इन्होन 1956 का जिक्र किया है ...(व्यवधान)... मैं 1995 का जिक्र कर रही हूं।

श्री सभापति :आप बैठ जाइए, मैं इस पर अपनी व्यवस्था दे रहा हूं।

श्रीमती सुषमा स्वराज :आप 1956 का जिक्र कर रहे है, मैं 1995 का जिक्र कर रही हूं और आज से केवल 9 वर्ष पहले की परम्परा बता रही हूं। इलेक्ट्रिसिटी बिल यही, इसी सदन से सलेक्ट कमेटी को गया था, लोक सभा से पारित होकर आया था। 1956 के बाद 1995 तक बहुत पानी गंगा में बह गया।

श्री सभापति :बैठिए, बैठिए।

श्रीमती सुषमा स्वराज : 1995 का जिक्र भी उसी "कौल एंड शकधर" में है। 1995 में इलेक्ट्रिसिटी बिल यहीं से गया था, रेफर हुआ था, यह लेटेस्ट है।

श्री सभापति :अब कोई माननीय सदस्य नहीं बोलेगा। ...(व्यवधान)...

श्री सुरेश पचौरी :सरकार तैयार होती है। 1995 में सरकार में हम थे। ...(व्यवधान)...

श्रीमती सुषमा स्वराज :तो यह कहिए कि आप तैयार नहीं है।

श्रीमती सुषमा स्वराज : और हम ही सरकार में नहीं थे, अहलुवालिया जी, जो आपके करीब जाकर बैठ गए, वे भी सरकार में थे।

श्रीमती सुषमा स्वराज :तो कहिए, आप तैयार नहीं है, यह मत कहिए कि 1956 की परम्परा है।

श्री सभापति :इस पर मेरी व्यवस्था सुन लीजिए। मैंने इस संबंध में दोनो पक्षों के तर्क सुन लिए है और डा. मुरली मनोहर जोशी जी ने पोटा बिल के संबंध में जिस प्रकार की गंभीर बातें कहीं है उनका समाधान करने के लिए कानून की बहुत आवश्यकता है। उस कानून की आवश्यकता को ध्यान में रखते हुए मैं समझता हूं कि यदि श्रीमती सुषमा स्वराज के प्रस्ताव अनुसार इस बिल को सलेक्ट कमेटी को या किसी कमेटी को भेजा जाएगा तो इसमें देरी लग सकती है और यह कानून नहीं रहेगा तो इसके कारण कितने ही संकट खड़े हो सकते है। यही बात अन्लाफुल एक्टिविटीज (प्रिवेंशन) अमेंडमेंट बिल पर लागू होती है। इसलिए जो भी आपने व्यवस्था के प्रश्न उठाए है, उनको मैं स्वीकार नहीं करता और इन दोनो विधेंयकों को मैं चर्चा के लिए रखता हूं।

SHRI SHIVRAJ V. PATIL: Sir, I am grateful to you for the ruling which you have given. In fact, I am grateful to the hon. Member on the other side also for the kind words she has used with respect to my attachment to the Standing Committees. It is a fact that in the House-from the Chair and from the Benches also, it was said by me that the Bills which are introduced in the House should be referred to the Standing Committees. Sir, you have given the ruling, and it is not necessary for me to go into the details. But, because this is an important issue, I will just make a very small submission on this point.

These two Bills are Bills, which are introduced in the House to replace the Ordinances. The provisions for issuing or promulgating Ordinances are given in the Constitution of India. And when these provisions are used, one cannot say that we are introducing the Bill from the backdoor. That will be a wrong interpretation of our Constitution.

SHRI P.G. NARAYANAN (Tamilnadu): Your colleague said that.

SHRI ARUN JAITLEY: We did'nt say that; your colleague said that.

SHRIMATI SUSHMA SWARAJ: Your colleague said that; we didn't say that.

SHRI SHIVRAJ V. PATIL: Anybody saying that is wrong. The provision of Ordinances is given in the Constitution in order to cope with the emergencies and urgencies.

SHRIMATI SUSHMA SWARAJ: He said, पिछले दरवाजे से।

SHRI SHIVRAJ V. PATIL: Anyone who has said that is wrong ...*(Interruptions)*... I am not alleging against any particular Member as such.

So, Sir, what is important is that the Bill has to be passed in time, and you have very rightly said so. At the time of framing the rules, it was specially .stated that only those Bills that are referred to the Standing Committees by the hon. Presiding Officers would be considered by the Standing Committees. The question raised at that time was whether the Bill should be automatically referred to the Standing Committees or not. And then, it was very wisely decided that there could be Bills, which cannot be referred to the Standing Committees. For instance...

MR. CHAIRMAN: I think the matter is settled ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: But, Sir, this should not be repeated. I am on an important point, which could be made use of by the hon. Members later on. Hence, I am explaining the position to the entire House.

At that time, it was decided that the Finance Bill, Appropriation Bill and the Ordinances should not be referred to the Standing Committee. The Finance Bill has to be passed in time. There are no discussions on the Appropriation Bill; what is discussed in the shape of discussion on the Budget is enough for passing the Appropriation Bill, and that is why, the decision taken was that the Bills of technical nature, such as the Finance Bill, Appropriation and Bills to replace the Ordinances should not be referred to the Standing Committees. And we are exactly on this point. And so, let there not be any confusion on this point.

When the Bills, which were introduced to replace the Ordinances, were referred to the Standing Committees, that was done with the consensus of the entire House. Sometimes, it was thought that is better that the Bill should be referred to the Standing Committee rather than waste the time on the floor of the House. But the majority of the rulings given by the Presiding Officers are in favour of not referring the Bills that are introduced to replace the Ordinances to the Standing Committee. That is the point i wanted to make.

Now, I shall come to the two Bills, Sir. We are discussing two Bills and we are discussing two other Motions to disapprove the Ordinances. While introducing the motions, hon. Dr. Murli Manohar Joshi said that...

श्री सभापति :सब जवाब एक साथ ही दे देना।

SHRI SHIVRAJ V. PATIL: Sir, I have already moved my Motion. It was not necessary for me to say this, but I felt that probably the hon. members wanted me to make the initial statement. I would rather reply to the debate than make the initial statement.

श्री सभापति :बोलिए, बोलिए।

SHRI SHIVRAJ V. PATIL: Sir, I have already moved the Motion. The only thing is that sufficient time should be available to us to give the reply.

श्री सभापति :आपको ज्यादा टाइम दूंगा।

SHRI ARUN JAITLEY: Mr. Chairman Sir, I rise to oppose The Prevention of Terrorism (Repeal) Bill, 2004' and The Unlawful Activities (Prevention) Amendment Bill, 2004".

Sir, I oppose these two Bills at a stage when the whole world is debating on how to combat the manace of terrorism. It is paradoxical and ironical that a country which has been at the receiving end of terrorism should be repealing and withdrawing its anti-terror law. This is a paradox which the rest of the world will find very difficult to understand. Sir, we oppose these Bills primarily on the grounds that these Bills, if enacted, seriously compromise India's national security. We oppose these Bills because these Bills, when enacted, indicate that a soft regime for detection, for investigation and for prosecution of terrorist offences will come into force in India. We oppose these Bills because these Bills are going to create an anomalous situation which I will demonstrate where the procedures and the provisions of an anti-terror law in India, which are not being brought in the shape of The Unlawful Activities (Prevention) Amendment Bill, are going to be much softer than legislations which deal with smugglers, which deal with hoarders, which deal with local with *mafias,* which deal with drug peddlers. We will have a strange legislative regime —while dealing with hoarders and drug pedelers we are going to have extraordinary stringent laws, but milder and softer laws when it comes to dealing with terrorists. We oppose these Bills, Sir, because these are a part of callous policy towards national security which the present UPA Government has adopted where it is preferring vote bank politics over considerations of national security. Sir, you have just given a ruling on the question of not referring it to either a

Standing Committee or a Select Committee. My senior colleague, Dr. Joshi, has moved a Statutory Resolution disapproving the Ordinance itself. When I said that this is a part of a pursuit towards the vote bank politics, the first question which comes to my mind is: What was the need to promulgate an Ordinance on the 21st September, 2004? I refer to this date, the 21st September, 2004, because that was the date on which the (Repeal) Ordinance had been promulgated, and the new Unlawful Activities (Prevention) Amendment Bill seeks to replace the Ordinace. There is a significance to this date, and the hon. Minister for Parliamentary Affairs said that there was agrave urgency that the repeal had to take place immediately. Sir, this House through the Joint Session in the year 2002 had enacted the Prevention of Terrorism Act, 2002. The enactment of that Act was pursuant to the concern which we had shown towards national security and the menace of terrorism as it existed in India. It was also pursuant to a global effort to combat international terrorism. In fact, we area privy to the U.N. Resolution 1373 under which each Member-State of the United Nations had committed the enactment of an anti-terror law within the State itself because this is a manace which not only concerns one country but across the world concerning several nations. We enacted that law and even though the Bill was enforced on 28th March, 2002, in fact, that Bill also replaced an earlier Ordinance, and that earlier Ordinance had come into force on 24th October, 2001. Section 1, sub-section 6 of that Ordinance itself said, "Save as otherwise provided in respect Entries 24 and 25 of the Schedule, that is' the banned organisations, it shall be deemed to have come into force on 24th October, 2001 and shall remain in force for a period of three years from the date of its commencement." Therefore before POTA, the. law, and POTO, the Ordinance came into force on 24th October, 2001, and was to remain in force for a period of three years after which this Legislature would have reconsidered the matter. The Government would have decided whether it wants to continue with it or not continue with it, and in the normal course, in the first instance, the three years period would have been over on the 23rd October, 2004. When the law itself was coming to an end or coming for review on or before 23rd October, 2004, what was this grave urgency that just 32 days before that, you must bring an Ordinance and, through that Ordinance, try and repeal that Act and bring supplementary Act into force. You could have waited for 32 days; you could have allowed the debate in this Parliament to take place; you could have called for a special session of Parliament if it was

necessary; you could have debated it if it was pursuant to your NCP in the monsoon session of Parliament which was being held in those days. But, even 32 days before it was to lapse and it was to come up for reconsideration, this Government thought it fit, and I am sharing the sentiment of the hon. Home Minister and not calling it a backdoor method, though, under these circumstances, the Parliamentary Affairs Minister's statement could have been borrowed by me, that 32 days before it was to be reviewed, you decided to bring an Ordinance and, through that Ordinance, you decided that we must repeal this law and bring an alternative formulation and while I discuss that alternative formulation, I will show how that alternative formulation, word-for-word, in most of its provisions, is going to bring smiles only on those faces which have traditionally been soft on terror. Therefore, what was the need to bring an Ordinance when you could have waited 32 days more when this legislation itself would have come up for review, whether to continue it or not to continue it? Even when this Bill was originally passed, the Government, at that time, had said, "Let us experiment it for three years. Experience will teach us what to do with it; whether the terrorist situation remains till that period or does not remain." But, you did not want to wait till that date because you wanted to send a signal, not for reasons that this country needs a legislative scheme for investigation of terrorist offences, for prosecution of terrorist offences, but you wanted to send a signal really in pursuit of your vote bank politics that even though only 32 days were left, we wanted to repeal it and, therefore, sent that signal itself. Sir, let me say this that this is one of the rare cases where the Government has chosen to bring an Ordinance and then, with the majority that it commands, pass a Bill, which only history will take into consideration, whether it really served the purpose for which such anti-terrorist law in India was required or not.

SHRI SHIVRAJ V. PATIL: I would like to clarify if the hon. Member yields. Will you yield? Sir, this point is likely to be repeated by other Members also. So, in order to avoid that kind of a repetition, I would like to say that if the Bill, if this Act had lapsed and not repealed, the cases under the Act would have continued.

SHRI ARUN JAITLEY; Sir, I am extremely disappointed with the statement of the Home Minister. I am disappointed because this statement of the Home Minister is a stark confession that for all people being prosecuted for terrorism, the passage of this Bill will lead to the withdrawal

of those cases itself. I am not so sure whether the Home Minister is correct on this or not.

SHRI SHIVRAJ V. PAUL: I will explain in my reply.

SHRI ARUN JAITLEY: Sir, I do hope that he is not correct, but if it is correct, then my worst fears have come true. You have hundreds of cases where terrorists in this country are being prosecuted under POTA. A person can only be prosecuted under a law which existed on the date of offence. We can't legislate today and under the new law retrospectively create an offence with reference to a back date. The Constitution does not permit that to happen and, therefore, if the Home Minister is right, and I do pray that he is not right, then this law—my worst fear has come true—is really going to bring smiles, not as I said on the faces of those who wanted to be soft on terror, but it is going to bring laughter on the faces of those who had indulged in terrorist offences. And, there would be no law, there would be a vacuum created, if his statement is correct, *so* that those people cannot be prosecuted at ail. And, is the legislative jurisdiction of this House going to be used for that purpose, particularly under the circumstances, we are living in? Sir, day before yesterday, we had a debate on internal security, and, my distinguished colleague, Mr. Arun Shourie, made an elaborate presentation of what he thought was the state of the country. When in September, 2001, this Ordinance was first brought in what was the state of our country, and, what was the state of the world we were living in. 9/11 had just happened in that month itself. But, India's battle and India's misery at the hands of terrorism had not started on 9/11. We had been suffering at the hands of terrorism for almost more than a decade before that had happened. We have seen the face of terrorism in Punjab for almost ten years, we have seen insurgency of various forms in the North-East, we have seen insurgency by some groups even down South, and, we have also seen the worst form of insurgency in Jammu and Kashmir and its consequences in other parts of the country.

We have also seen the emergence of a new kind of Maoist terrorism in the last few years spreading over almost a dozen States of India. And, if the figures given by Shri Arun Shourie are correct, which are based on the report that he was citing, almost 137 districts of the country are engulfed by this last kind of terrorism. That is the situation of the country that we were in. Barring some inprovement, which had taken place in Punjab in

the early 1990s, the situation in other parts of the country still remains a matter of concern. The situation, if at all in several States on account of Maoist terrorism, has worsened. We had the statement of the hon. Minister yesterday saying that in the last few days, despite the winter-snows, we have seen the infiltration on the increase. I share his concern, and, that is a concern for each one of us, and, what is the kind of cost we have to pay because of this. When we are repealing our anti-terrorist law, and, as the hon. Minister says, "giving a mandate that even past prosecutions will go", what is the kind of situation we were facing? Sir, we faced a war immediately after 1947, we faced a war in 1965, we faced a conventional war in 1971, and, thereafter, we had the conflict in Kargil. Pursuant to all these earlier three wars, I think our not-so-friendly neighbour had realised that India's conventional strength in conventional war is far ahead. And, therefore, in the 1980, we found this new system of various ISI modules being created in India, various forms of insurgency being supported in this country.

Sir, let us just look at the kind of cost and consequences we had to pay. Sir, all these four conventional wars that we have fought, if I regard Kargil as one of them, the total number of lives we lost in conventional wars has been 9,857. About 9,857 lives, just less than 10,000, how unfortunate it is. This new kind of war through cross-border terroris'm which had been launched against us, and, all these five forms of terrorism that we faced, they have cost us lives of two of our former Prime Ministers, they have cost us almost 65,000 civilian lives, and, they have cost us lives

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of ten thousand security personnel. That is the kind of cost that we have paid through this unconventional war, and, now we want to have a regime which washes away all the past crimes, which says that we are not going to prosecute people for the acts of terrorism that they have committed, and, which says, that—and, I will show it from the kind of law which has been enacted—for the taw that we will have in future, let this country put on kid-gloves and velvet-coated gloves, and then start fighting terrorism.

Sir, look at the recoveries done by our security forces. I am sure the Home Minister is more aware than I am. Our security forces have been doing an exemplary job of fighting this kind of terrorism all over the country. I will give the figuces of just the explosives, which they have recovered, and, the Home Minister may correct me if I am wrong. Sir, these are the figures of what they have recovered, and, not: what they have used.

According to the governmental figures, it is 49,511 kgs. and now touching close to 50,000 kgs. I asked one security expert as to what is the potential of this kind of explosive which has been seized and recovered, and, he told me, if used, it could blast every inch of the Indian territory. There are number of AK-47s, the grenades and other weaponry, which have been recovered. What about the lives lost? The quantum of money which we are spending on all our paramilitary forces and the quantum of money that we are spending on all our counter terrorism operations, maintenance of those forces, this is the exact amount of money which should have been spent on roads, which should have been spent on healthcare, which should have been spent on education, which should have been spent on drinking water. We are now eating into a large part of our national resource and diverting it into a counter terrorism apparatus which we are trying to build up in this country. These are not the only costs. The costs are: terrorism has started under-valuing democratic institutions. It is extremely difficult in terrorist-prone areas—we saw it happening in Punjab; we have seen it in the North—Eastern States to have even timely elections, to get the fear out of the minds of the people. In Jammu and Kashmir, terrorists have been opejily announcing at times, "Well, whoever comes to vote, we will give him this television set as a gift". So, it undermined democratic values. The impact on governance is adverse. Now here, you will have State Government in the North Eastern States, you will have a State Government in Jammu and Kashmir, which may be endeavouring its best on various welfare schemes. But, the prime concentration of the Governments, then, is not on the governance and those schemes, but on "how do we get rid of this insurgency which has prevented any developmental activity?" It has prevented economic activity. Nobody makes investments—whether it is foreign investors or domestic investors—and go in an areas where/e/iad/s earring AK-47 are moving on the roads, where plants are going to be blasted. Therefore, when the People's War Group in Andhra Pradesh has been targeting industrial establishments, it not only hurts those establishments, it disrupts the entire economic environment in that State. These are all different kinds of costs that we have been paying for it. Therefore, when this Parliament, through its Joint Session, decided that we need a special law, we were not the only country in the world which through that we needed a special law. Most liberal democracies in the world, like the United States, did it. When 9/11 happened, President Bush said, "A war has been launched against us". Three thousand people died because of 9/11.

What does a country say where 65,000 civilian lives and 10,000 security lives are lost? In fact, we used to answer them by saying, "It is now that you have realised what the concern in a country like India is going to be". And when we looked at the normal provisions of our law, we suddenly realised that in small criminal cases, convictions may be easier, but in high crime cases, the rate of conviction is close to six per cent, where the chances of acquittal are 94 per cent! And, if you are a terrorist, where an ordinary witness is not going to come and depose against you, where the writ of fear of the terrorist" is the judge's mind, then, is six per cent rate going to go up, in case of terrorist offences, or, must we have a special machinery? We were not the only country in the world which decided to have this law. Under the United Nations Resolution 1373, all member States were asked to have that Resolution. The United States had a series of legislations, from the Patriot Law to the other law. They provided for secret military trials and so on, because they could see the emerging strength and menace of global terrorism and how that country was to combat them. Europe, which saw only very small consequences, most European countries decided to have an anti-terrorist law. And, therefore, we also decided. What were our features when we decided to have it, and why were those features necessary? I will now show, by these deletions, which you have now brought about, what you have done to the existing law, and how the existing law is going to be wholly insufficient to deal with the kind of menace which exists in the Indian society.

SHRI RAJEEV SHUKLA (Uttar Pradesh): There are sufficient provisions to handle terrorism.

SHRI ARUN JAITLEY: Well, I will not only show how some of the provisions have been deleted, but, then, Sir—we have Mr. Nariman, a very eminent counsel-would say only in a lighter vein using that word, "At times, the law is an ass". I will now show, after showing these provisions, that you now have those strengent provisions for the Essential Commodities Act, you have it for the Narcotics Law, you have it in four States in India to deal with local gundas, but when it comes to international mercenaries and *fidayeens,* you say, "We are thinking in terms of human rights, and therefore, we are going to delete those laws". Is that the kind of legislative process by which the drafting of such legislations should take place?

Sir, as far as the POTA is concerned, the first provision of POTA, which was of extreme importance, was that all other laws did not define terrorism. Therefore, it became clear after TADA that there were some difficulties in the definition of terrorism in TADA. It was for this reasons that there was an anomalous definition in that law. We only learnt it by experience, in the unfortunate case, in which our former Prime Minister, Mr. Rajiv Gandhi, was assassinated. The Supreme Court held that the offence against those who were accused of assassinating him did not fit into the definition of 'terrorism'. Now, it was that reason that persuaded us to have a more elaborate definition of the word 'terroism'. Therefore, harbouring a terrorist, funding terrorism, using a place for terrorist activity, all this was brought in, in the definition of terrorism itself.

The second important feature was that any proceeds of terrorism, any money earned from ransom, from terrorism, from looting, was declared unlawful. And this was rightly declared unlawful because there was a priniciple of civilised jurisprudence, that no man can retain to himself the profits of crime.

SHRI ANAND SHARMA: It is stated in this Unlawful Activities (Prevention) Amendment Bill as well. *(Interruptions).*

SHRI ARUN JAITLEY: Allow me to explain, Mr. Sharma allow me to explain.

MR. CHAIRMAN: Allow him.

SHRI ARUN JAITLEY: I will come to my area of objections also. In areas, where we are in agreement with, I do not think we should spend any time. The reason was that if a man steals somebody's property, if a smuggler earns money from smuggling, if a narcotic dealer earns money from selling narcotics, then profits of crime cannot be retained by him. We did not have any other law where profits of terrorism can be retained by a person. Therefore, we put a provision that profits of terrorism are to be confiscated and should not belong to the terrorist himself. The third provision that we had put was, that you bring a ban on several terrorist organisations which will be included in the Schedule itself. We has the Unlawful Activities (Prevention) Act, 1967, and there was a Select Committee which went into that issue and brought in only to ban certain kinds of organisations. Now, we had a ban on terrorist organisations, which was prescribed in the

terrorist law itself. One of the most important provisions was such—and I will show how that provision has been virtually destroyed—that without that one provision, the entire life and soul of an anti-terrorist law is lost. The manner in which it has been drafted in the existing Bill itself, serves no purpose. Terrorists, particularly those involved in cross-border terrorism, today are very technology-sawy. Their communications are not only through intercepts, but they are through wireless and various other equipments. Our intelligence and our security forces endeavour very hard to intercept their communications, and it is only when they are able to intercept their communications that they are able to prevent the commission of a terrorist offence. Therefore, inetelligence gathering against terrorism is one of the important instruments by which a terrorist activity can be stalled or prevented. Therefore, this power has to be given to the security forces, to the police forces, who are actually in the field, fighting terrorism. This was really the heart and soul of that legislation itself.

SHRI SHIVRAJ V. PATIL: That is already there. In the amendment, it is there. If you make all these points, an impression will go that these provisions are not there in the new Amendment Bill. *(Interruptions)*

SHRI ARUN JAITLEY:' I will come to the existing Bill, after I finish the earlier law. *...(Interruptions)...*

SHRI SHIVRAJ V. PATIL: All these provisions are there introduced in the Unlawful Activities (Prevention) Bill. We are amending that law, and introducing these provisions.

SHRI ARUN JAITLEY: I am afraid, with my utmost respect and affection for the hon. Home Minister, if the Home Minister seriously reads the provisions with regard to interceptions of communications that he has brought in, I will demonstrate it just now, in the next five minutes or less, that it has been diluted, made impossible and will really serve no purpose. It is a provision in which a huge change itself has been brought about from the existing provisions. The next provision, Sir, and I am just mentioning it, was with regard to admissibility of confessional statements which are made before senior police officers and then the person confessing is produced before the Judge and before the Judge, he is asked whether he has voluntarily made it or not; he has a right to make a statement before the Judge. This provision, which is essential and has been essential in all earlier anti-terrorist laws and is even present in many other laws even *in*

more stringent form, today has been diluted and taken away from the Act. And I can tell you, Sir, that in a large number of cases under the anti-terrorist laws where convictions have taken place, but for this provision, convictions could not have taken place. Stringent bail laws, because the normal principle is that either initially or at a later stage, except in some rare offences, bail has to be granted, the Supreme Court in one of the cases said that it's bail and not jail which is the rule and, therefore, you have several laws where special hard bail provisions have been created. POTA had that hard bail provision and the rationale behind that hard bail provision is that if a *fiyadeen* or a suicide squad member is granted bail, it would be too naive to expect that he would come and appear in the court on the next date of hearing. People who are trained either to kill or to get killed are not going to submit before the jurisdiction of an Indian court and say that, "I got bail last time, I will come and appear on the next date of hearing". They are going to flee from the courts of law. For these international terrorists now we have said in the amended law, the normal bail provisions will apply. There is also, Sir, a special provision for witness protection, special Judge, and so on which have been created and then there is Review Committee for various areas that in case the power is abused or misused, you will certainly have an option first to go to the Review Committee, then, of course, the judicial review itself is possible. What has the new law done, Sir? Let me not go into the minor changes that the new law has made. The hon. Home Minister said with regard to interceptions, POTA, as a law, had a detailed chapter on interceptions of telecommunications. Interceptions of communications- which terrorists from one part of the world may send to another and it is through those intercepts that you are able either to prevent commission of the offence or if the offence is committed, you are able to introduce it as an admissible evidence. You have to empower police officers who are dealing with it in order to go and then collect evidence and there is an urgency in these investigations. Suppose, a police officer in Kashmir, a police officer in North-Eastern Nagaland, a police officer in any of the terrorist-affected areas or Maoist area is told that such and such module or group is functioning, the police officer, if he is empowered under the law, takes the permission of his D.G.P., which was required in the original law, and then starts intercepting communications. Who could have an objection to retaining this provision which is an essential instrument in fighting terrorism? What the Government now has done, Sir, is to repeal the entire chapter

and bring in Section 46 of the new Unlawful Activities (Prevention) Amendment Bill, 2004 and all that it says is,

> "Notwithstanding anything contained in the Indian Evidence Act or any other law for the time being .,; force, the evidence collected through interceptions via electronic or oral communications under the provisions Of the Indian telegraph Act or the Information Technology Act or any other law for the time being in force, shall be admissible."

Now, what is the impact of this? Sir, even after I have read it, I can see the hon. Home Minister is not convinced. Let him give the benefit of doubt if there is a genuine mistake. What does the Indian Telegraph Act say? The Indian Telegraph Act says, there is one provision, Section 5, that if there is a public emergency or an issue of public safety, the Central or the State Government can take possession of telecommunication equipment. Now, in an emergency, you can do it. We don't have a state of public emergency today. There is no need to authorise a Station House Officer of a police station located in a terrorist area to take possession of terrorist telecommunication equipment. All you have today, there are very sophisticated interception devices, which act, which play a key role globally in fighting terrorism. So, only if under this provision, some evidence is collected, it can be led in law in evidence.

SHRI ANAND SHARMA: That is what it says, "Notwithstanding those provisions of the Act...." I am sure, you have read it.

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): These are all academic things.

SHRI ANAND SHARMA: Notwithstanding anything contained in the Act...You please go through section 46 on page 11.

SHRI ARUN JAITLEY: Sir, my disappointment with this Bill increases. If this is the understanding of the Ruling Party of what is written, I leave it to the wisdom of the future generation; I leave it to luck of the future terrorists when this law is made applicable to them. Notwithstanding what is contained in the Evidence Act, evidence collected under the Telegraph Act and the Information Technology Act will be an admissible evidence. The rules of admissibility o telecommunicative evidence in the Evidence Act, notwithstanding that, if under these two laws or any other law, evidence is collected, that evidence would be an admissible evidence. So, under the

Indian Telegraph Act, you collect evidence when you take possession of the telecommunication equipment; under the Information Technology Act, you collect evidence through a computer resouce. You collect evidence in offences relating to hacking, you collect evidence in offences where IT is going to be misused. I am still unable to see any logical rationale where the entire Chapter dealing with the interception of terrorist communication should have been deleted, because, once you delete this Chapter, and you substitute it by a solitary provision that what is admissible in evidence collected through interception under other laws, then you have to look at the other laws are not laws. The other laws are not laws under which in Kashmir or in Mizoram or in Nagaland or in any other terrorist-prone areas, the police officers are directly empowered to intercept, and therefore, you actually had cases—I need not refer to cases—because in one of them, this issue was raised. The appeal is still pending before the hon. Supreme Court. When this Parliament was attacked, in that case, one of the issues was that the procedure prescribed by you has not been followed, and therefore, intercept evidence is not legally admissible. You are going to open floodgates that police cannot illegally do certain kind of things, and therefore, to delete the provision related to interception and substitute it by such a mild provision is something, Which I find extremely difficult to accept.

SHRI SHIVRAJ V. PATIL: The word "electronic" used in this is very important. Any electronic equipment can be used for collecting the evidence, and that evidence will be valuable; that evidence will be admissible in a court of law. A computer, anything can be used for collecting the evidence.

SHRI ARUN JAITLEY: I do not disagree with the hon. Home Minister on this question. But what the hon. Home Minister ssid is only a part of this section. A part of the section is, when evidence is collected, under these following laws through electronic equipment, it will be an admissible evidence.

SHRI SHIVRAJ V. PATIL: That is as far as the telegraphic communication is concerned.

SHRI ARUN JAITLEY: Under this law, there is no provision where police officers dealing with terrorism, investigation of terrorism, prevention of terrorism, have been authorized to collect that evidence through intercept

of that telegraphic communication. Therefore, my hon. colleague, Shrimati Sushma Swaraj, has said that refer it to a Standing Committee, call for the police officers, constitutional and legal experts as witnesses. Therefore, it is precisely this. ...*{Interruptions'..*

SHRI ANAND SHARMA: Now, it is hurting you. But we were saying the same thing when you brought POTA through an Ordinance, and you had to call the Joint Session. When in both the Houses this demand was made, what was your attitude? Today, you are sermonizing us. What was your Government's attitude at that time? Let it go on record.

MR. CHAIRMAN: Mr. Anand Sharma, you will get the chance to make your point.

SHRI ARUN JAITLEY: Sir, this is a repeal Bill, and 32 days before the law was to lapse, the urgency of repeal was such that we only think in terms of ugency of the repeal even though we make a mess of the existing law. If that is the attitude of the Government, it is only the posterity which would tell us whether what is being done today is the right approach or otherwise.

Sir, let me give you another example. The TADA had a provision which everybody regarded as a harsh provision for the purpose of grant of bail. The TADA provision was that no person would be granted bail till the public prosecutor got an opportunity of opposing and the bail would be granted only after ther judge is satisfied that, on the face of it, an offence is not made out. Therefore, in POTA those provisions were diluted and the diluted povisions of POTA were that for the first year the POTA bail provision would apply and thereafter the normal law would apply, and even in those POTA provisions some language changes, keeping in tune with the judgement of the Supreme Court, were made. Today, I heard the hon. Home Minister saying, "Well, keeping the human rights in mind, we have now decided to balance our fight against terrorism with maintenance of human rights and, therefore, as far as. bail is concerned, the judge will decide under the normal Cr. PC. whether bail has to be granted or not and these extraordinary provisions that we have under POTA for a period for one year also are not required".

Sir, I just started making a broad analysis of how we are dealing with other laws on the same question. Now we have a law which deals with

fidayeen, which deals with international terrorism, and the normal Criminal Procedure Code is to apply and a man, if he is arrested, is granted bail oblivious of the fact that whether he is going to appear, after getting bail, on the next day of hearing before the court or not. We have hundred and hundreds of such cases. The Finance Minister will be able to give the exact figures where foreign nationals disappeared the moment they got bail under the Narcotics and Psychotropic Substances Act, and that was the last time they appeared before the court. Here, we are not dealing with foreign nationals who are dealing in narcotics. We are dealing with international terrorists; we are dealing with people who come from across the border with the object of killing or getting killed and are threatening the sovereignty of this country. For them, we are saying, well, they must be released on bail and we must be considerate about their human rights. Exactly the same language, which was there in TADA, that is, throughout the bail the provisions will be the same was there under POTA and it was, as I mentioned, for one year. It is, today, present in Narcotics and Psychotropic Substances Act, 1985. When the Congress Government was in power in 1985, you decided, as far as drug peddlers are concerned, that the normal rule was "no bail". Under the Prevention of Damage to Public Property Act, 1984—at that time also the Congress Government was in power—there are difficult provisions for getting bail for those who damage public property. Under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1990, the Cr. PC. would not apply; special bail povisions are to apply. Under the Essential Commodities Act, there are similar provisions. Not only these, but also, today, you have four States in India where verbatim the same bail provisions, which were under TADA, are still applicable. Which are those States? One is Maharashtra. Who brought that law? The Congress-NCP Government in Maharashtra brought that law, that is, MCOCA. Have those people, the local goondas, who are arrested under that law, got human rights in the explanations given by the Home Minister? You are concerned with the human rights of *fidayeen.* But your local or *swadeshl* goondas are entitled to hard bail provisions where bail is not to be granted. But if a terrorist commits a crime, bail is to be graned. Which is the second State? The second State is Karnataka. Who brought that law? The Congress Government brought that law. Who is continuing that law? The Congress Government is continuing that law under the Karnataka Control of Oganised Crime Act. You have two other States. The TDP brought that law in Andhra Pradesh. There is a similar

law in Gujarat for dealing with organised mafias. So, the State Legislatures in this country thought it fit to bring laws where hard bail provisions are there. So, we have four States in India which have the same law for dealing with your local mafias indulging in organised crimes. For dealing with drug peddlers, you have a hard bail provision. For dealing under the Essential Commodities Act, you have a hard bail provision. For dealing with narcotics, you have a hard bail provision. Sir, am I exaggerating when I say that why are you being soft on terrorists? Why mustn't terrorists also get some hard provisions which are there in all other laws? These are laws some of which are time-tested. These are not laws which were brought either by the UF Government or the NDA Government. Most of these laws have been brought by the Congress Governments. Therefore, am I again exaggerating when I say that 32 days before the Bill was to lapse, you brought this law really keeping in mind the signals of vote bank politics rather than the requirements on the ground how terrorism is to be dealt with?

You have another provision in this Bill which you had it in POTA which has been deleted where confessions made to police officers were made admissible. Let us just look at the anatomy of a terrorist offence when it takes place. When mercenaries and *fidayeen* come and indulge in a terrorist offence, normally they are not arrested on-the-spot. They either kill or get killed. Those who attacked Parliament, was a suicide squad. The Parliament was rescued, Members were rescued and the people here were rescued by the heroic act of our officers. But the five terrorists died on-the-spot. So we could not arrest them. When late Shri Rajiv Gandhi was assassinated, those of the inner core team blew themselves up along with the victim that they targeted. But who did the investigations look for? The investigations always look at people who have been part of the larger conspiracy and as part of that larger conspiracy who have been giving support, who have been giving money, who have been giving logistical support, who have been giving weapons, who have been giving vehicles, who have been providing for the escape of those people, who have been indoctrinating people. When Parliament was attacked, we were looking for Gazi Baba. We were looking for people who were giving logistical support. When late Shri Rajiv Gandhi was assassinated, the actual culprits died on-the-spot and those who were part of the conspiracy, the investigations led them. Does the Government really believe that to find out and discover

this chain, we are going to easily find some eye-witnesses who will say that when these assassins went to Gazi Baba in a closed door meeting, I was present and i heard this being said; I heard this indoctrination being made. Obviously, we don't expect it from them.

It is for this reason that in terrorist offences, all over the world, you have a special provision in regard to how confessions of the accused and some other people are to be dealt with. TADA had a provision where confessions were made admissible and the confessions were admissible in law simpliciter. The Supreme Court made some observations and said, "This is a bit too harsh, please dilute this law. If a person is making a confession, have some checks and balances so that confession is not misused," This fact was looked into and after an extensive debate the POTA provision said that the confession should be made before a very senior level police officer, an SP or above, and within 24 hours the man making the confession must be produced before the judge. He will have an opportunity of telling the judge whether this confession, he has made voluntarily or otherwise. If he says that it was involuntarily, the judge will also get him medically examined. We have diluted that provision in POTA itself. Today you have a law where the entire provisions relating to admissibility of confessions has been completely deleted now. If you are deleting the provisions, please ask some of your agencies, some of your SITs which have dealt with the cases, as to what would be the impact on the investigation of terrorist offences if the provisions relating to confessions being admissible are completely deleted. We have cases after cases. I have not the least doubt in saying that. Read the judgement of the Supreme Court. I have cited that example repeatedly in the asssassination of late Shri Rajiv Gandhi. Take the confessions out, and this country would have made a spectacle of itself. When a former Prime Minister was assassinated in the presence of thousands of people, but for those confessions, the convictions could not have taken place. And, today, we have a law where for dealing with terrorism, we are going to delete the confession. If you had thought of deleting the confession in case of POTA itself, why should you have admissibility of confessions in several other laws? I have just given you an example of the laws relating to four States, namely, Maharashtra, Gujarat, Andhra Pradesh and Karnataka, dealing with organised crimes. Why are confessions admissible against organised mafias? Why are confessions admissible under the Narcotics Act?

(MR. DEPUTY CHAIRMAN in the Chair.)

My learned friend, the Law Minister, is here. Even statements made to Customs Officers and Enforcement Officers in respect of economic offences are admissible confessions. These are not laws which he has brought out. These are laws which have been time-tested...

SHRI H.R. BHARDWAJ: Will you yield for a minute? You are absolutely misleading the House. There is no bar in the statute to the use of confessions so far as the Income-Tax Act and the Customs Act are concerned. But in the Evidence Act, there is a bar that no statement made before a police officer shall be used as evidence. These are two different areas. And, the Report of the Law Commission has said that even the confessions before the Customs Act and the Income-Tax should be excluded. This is the Report of the Law Commission. Therefore, don't mislead us between the confessions under these two laws and this particular law. These are two different areas. The police in this country have been fashioned to beat up people right from the British days. And, if you are arguing in favour of confessions before the police, I am very sorry; there will be no rule of law in this country.

SHRI ARUN JAITLEY: Sir, I am grateful to the hon. Law Minister *...(Interruptions)...* Not disappointed; I am rather greatly puzzled. But let me try and resolve the puzzle that he has put the hon. House into. The hon Law Minister says that under the Customs Act, statements made to the Customs Officers are also admissible even if you are an accused. It can be used against you in trial. You can be convicted on the strength of that statement. Statements made by you before the Enforcement Officers are admissible. You can be convicted because of that. The Law Commission says, 'Repeal that also'. But then, for those lesser offences, you should have thought of making a beginning and seeing the consequences. You have put the law upside down by saying, "Under the Customs Act, Income-Tax Act, Enforcement law, Narcotics law, against organised crimes, under all these laws, admissibility of statements and confessions remain. But there is something sacrosanct about terrorism. If somebody confesses to a terrorist offence, we must have a special exemption as far as the admissibility of that offence is concerned! When I say, 'I am puzzled', the rationale of the hon. Minister's logic is...

SHRI H.R. BHARDWAJ: I will remove your puzzle. I tell you; your puzzle has gone out of your mind. You don't understand that. The difficulty is that wherever the Legislature says that it is admissible and wherever it says that it is not admissible, that is the rationale. In so far as the Police are concerned, the Legislature said, "No statement made under Sections 161 and 162 of the Code of Criminal Procedure Code bars it." You are a very learned advocate; you are aware that the tests done to admit a confession is,-there are two tests done—one is that the confession must be voluntary and, secondly, it must be true. Unless these two conditions are satisfied, no statement, no confession, can be admissible.

SHRI ARUN JAITLEY: I think the confusion which my friend, the Law Minister, was creating is more confounded now. He is right to the extent that he says that this provision has to be made by law. Who quarrels on that? But, under the Customs Act, you have a provision; under the Enforcement laws; you have a provision; under the Income-Tax Act, you have a provision, and under the Narcotics law, you have a provision that Section 25 will not come in the way. Under the law against organised crime in the four States, you have a provision. So, what is so sacrosanct that you must not have this provision for terrorism? That is the test!

SHRI SHIVRAJ V. PATIL: Because the accused will be put behind bars for his life, or, he may lose his life. That punishment will be...

SHRI ARUN JAITLEY: But won't that happen in Maharashtra, your State, Mr. Home Minister?

SHRI SHIVRAJ V. PATIL: That is a different question.

SHRI ARUN JAITLEY: That is not a different question.

SHRI SHIVRAJ V PATIL: That is a different question altogether. You wanted the rationale; I am giving you the rationale.

SHRI ARUN JAITLEY: I am sorry. That is not a different question. *(interruptions)* In your home State, in your district of Latur, if a person is arrested under MCOCA, his confession is admissible. But if a terrorist is arrested, his confession is not admissible.

SHRI SHIVRAJ V. PATH: You have asked why it should not be admissible and I am saying that if you have to punish a man with that punishment, it should be taken very carefully.

SHRI ARUN JAITLEY: Sir, I repeat the example. If in the Home Minister's home district, a local *goonda* is arrested under MCOCA, his confession will be admissible; but if a terrorist is arrested under POTA, his confession will not be admissible. That is why I said you have created such an anomaly in the law that even for lesser offences, you are going to have harsher provisions; but for terrorism, which is eating into the vitals as far as our system is concerned, you say that the confessions are not going to be admissible at all. Sir, even under MCOCA, the punishment can be death or life imprisonment. Under the Narcotics Law, the punishment is life imprisonment. Under the Customs Laws, Enforcement Laws, the punishments can be up to seven years, or, even more at times. Why is it that you only want a lighter provision, a lesser provision, in dealing with terrorism? What, Sir, is this all going to lead to? This going to lead to a situation—in a country which has made one of the maximum sacrifices in the face of terrorism—where our investigative agencies are going to have their hands chained. They want to intercept some terrorist organisations; our investigative agencies are going to have lack of evidence when they start prosecuting terrorists. Our investigative agencies are going to find it extremely difficult beyond a point even to oppose bail in terrorist cases. At the same time, under other laws for lesser offences, the provisions and procedures are going to be harsher.

Sir, let us look at the big picture, which seems to have been created; and let me just end from where I started. If the object of this entire exercise is to really improve this country's ability in fighting terrorism, the unequivocal answer is no. Is it going to chain our investigative agencies, and cripple them, in investigating and prosecuting the terrorists? The answer is, yes. Is this going to send a signal to terrorist and others across the world that a country which has made one of the largest sacrifices in the face of terrorism, is now going soft and is repealing its anti-terror law? The obvious answer that we are going to give is, yes, this country is.

And Sir, let me just say that the Government has the majority on its side to rush through with this Bill. But, let me urge the hon. Home Minister; we do hope that the situation in our fight against terrorism improves and, God forbid if it does not, when history is written as to when we send soft signals that we are soft on terrorism, I am afraid these two Bills are going to be mentioned there in bold print and the Home Minister's Government is certainly not going to come out with glory in that situation.

श्री आर. के आनन्द (झारखंड) :उपसभापति जी, मैं आपका धन्यवाद करता हूं कि आपने मुझे बोलने का मौका दिया है। मैं रेजोल्यूशन का अपोज करने और सरकारी बिल का समर्थन करने के लिए खड़ा हुआ हूं। सबसे पहले मैं गृह मंत्री जी को मुबारकबाद देना चाहता हूं कि उन्होने यह काला कानून आर्डिनेंस के द्वारा खत्म किया। जेटली साहब ने टेरेरिज्म की बात पर बड़े जोर से यहां पर भाषण दिया है।*

एक माननीय सदस्य : आगे-आगे देखिए, होता है क्या।

श्रीमती सरला माहेश्वरी (पश्चिमी बंगाल) **:** आपको तो देख चुके है। ...(व्यवधान)..

श्री राजीव शुक्ल : पोटा के बाद ही पार्लियामेंट पर अटैक हुआ था। .....(व्यवधान)...

एक माननीय सदस्य :पोटा से पहले हिंदुस्तान नहीं था क्या? ...(व्यवधान)...

श्री उपसभापति : आप खामोश रहिए। ....(व्यवधान)....*

(At this stage, some hon. Members left the Chamber)

SHRI SHIVRAJ V. PATIL: Sir, I think we were discussing a very important Issue and we would have liked the Members to be present in the House, and if they had spoken on these two Bills they would have expressed their views on many important issues also. If they have walked out we are sorry about it. We request you, Sir, to go through the record and expunge anything which is objectionable.

MR. DEPUTY CHAIRMAN: After going through the record, if there is any objectionable statement by the hon. Member, it will be expunged.

श्री आर.के.आनन्द :उपसभापति जी, जब यह कानून पार्लियामेंट के सदन में पास होने जा रहा था तब हम सबने कहा था कि यह काला कानून है और इसको पास नहीं करना चाहिए। इसके

*Expunged as ordered by the Chair.

साथ ही यह भी कहा था कि इस कानून का मिस यूज किया जाएगा और इसके एब्सूज होने के बहुत चांसेज है। मुझे याद है कि नेशनल ह्यूमन राइट्स कमीशन के चेयरमैन ने आफिसियल स्टेटमेंट रिलीज की थी कि ऐसा कानून बनाने की जरूरत नहीं है। यह भी कहा गया था कि हमारे पास ऐसा मौजूदा कानून है यदि उसको सही तरीके से इस्तेमाल किया जाएगा तो ऐसा काला कानून बनाने की जरूरत नहीं पड़ेगी। यह भी कहा गया था कि इस कानून के गलत इस्तेमाल करने अंदेशे ज्यादा है। महोदय, जिस कानून मे बेल न मिलने का नियम हो, मुल्जिम को साबित करना पड़े कि वह बेकसूर है और जिस कानून में रिव्यू करने की पावर को लागू करने के लिए दो से ज्यादा साल लग जाएं, वह काला कानून नहीं तो क्या है? वह क्या कानून होगा जिसमें पुलिस के आगे दी हुई गवाही को एडमिसिबल माना जाए, वह कानून नहीं बल्कि तानाशाही का एक नमूना है। महोदय, क्रिमिनल लॉ का बेसिक प्रिंसिपल यह है कि 100 गिल्टी पर्सन्स छूट जाएं, लेकिन एक गलत आदमी को सजा नहीं मिलनी चाहिए। मुझे याद है, एल.के. आडवाणी साहब ने यहां कहा था कि हम देखेंगे कि इस कानून का गलत इस्तेमाल न हो। यह कहना बहुत आसान है। क्या आडवाणी जी इस सदन के सामने अपने एश्योंरेस पर खरे उतरे? महोदय, झारखंड के चीफ मिनिस्टर ने अपने बयान मे कहा कि झारखंड में इसका इस्तेमाल सबसे अच्छा हुआ है।मैं इस सदन को बताना चाहता हूं कि इस कानून का अगर सबसे गलत इस्तेमाल कहीं हुआ है तो झारखंड में हुआ है वहां पर 250 से ज्यादा लोगों को पोटा के अंतर्गत गिरफ्तार किया गया,जिनमें दस से ज्यादा बच्चे थे। उनकी उम्र 12 से 14 साल तक की थी। सबसे कम उम्र का लड़का 12 साल का था,जिसका नाम गया सिंह है। सबसे बड़ी उम्र का लड़का 18 साल का है, जिसका नाम राज नाथ महतो है। वहां ऐसे लोग गिरफ्तार किए गए जिनका आतंकवाद से कोई ताल्लुक नहीं है। जिसका किसी की जमीन का झगड़ा है और किसी के जाति के झगडे है। गुमला डिस्ट्रिक्ट से एक 17 साल की लड़की को पकड़ा गया है,जसिका नाम रूपनी खरिया है। उसका क्या कसूर यह है कि वह विमैन इम्पावरमेंट पर, गावों की औरतों को पढ़ाती है।जिनको पकड़ना चाहिए, वे गुनाहागार खुले आम रायट्स के दौरान घूम रहे थे। इस कानून ने वकीलों और पत्रकारों को भी नहीं छोड़ा है। सुशील कुमार भसीन एक अधिवक्ता है। उसको 2002 में पकड़ा गया और आज तक रांची की जेल में है। नगेन्द्र शर्मा "हिंदुस्तान टाइम्स " के रिपोर्टर है। उनको भी पोटा में पकड़ा गया। उनका कसूर यही है कि वे अपने पेपर में बैन्ड आर्गेनाइजेशन की एक्टिविटी को कवर किया करते थे। झारखंड में जवान औरतें, बच्चे, दलित, ट्राइबल्स, स्टूडेंट्स, गांव वाले और काश्तकार बंद है। इससे ज्यादा पोटा का और क्या मिय यूज हो सकता है? इधर गुजरात की तरफ देखा जाए तो 99.9 परसेंट जो लोग पोटा में गिरफ्तार किए गए, वे मुस्लिम कम्युनिटी के लोग है। गुजरात में इतने रायट्स हुए है, हम सबने इंडियन एक्सप्रेस पेपर को पढ़ा है,जिसमें कोम्पेक्ट डस्क के बारे में जक्रि कयिा गया है उसकी डिटेल्स है कि किस तरीके से प्लान करके रायट्स कराए गए। वी.एच.पी. और बी.जे.पी. के एम.एल.ए. उसमें शामिल है और उन पर कोई कार्यवाही नहीं की गई। उनमें कई मंत्री भी है। यह हिंदुस्तान की हिस्ट्री में पहली

बार हुआ है कि नेशनल ह्यूमन रायट्स कमीशन ने सुप्रीम कोर्ट में रिट-पिटिशन फाइल की और केसेज को एक स्टेट से लेकर दूसरे स्टेट में ट्रांसफर करवाया। जिनको पकड़ना चाहिए था, वे खुले तौर पर रायट्स के दौरान घूम रहे थे, पुलिस उनके साथ थी। जेंटली साहब ने कई प्रोविजन्स का जिक्र किया, उनमे से एक इंटरसेप्शन ऑफ कम्युनिकेशन के बारे में है। मैं इसके बारे में बताना चाहूंगा कि सैक्शन 43, जो पोटा का सैक्शन है और जो नया कानून बनाया गया है, उसके सैक्शन 46 के हिसाब से यह प्रोविजन है कि जो भी एविडेंस इंटरसेप्शन के माध्यम से आती है, वह एडमिसिबल मानी जाएगी। यह नए कानून में लिखा गया है। जो पुराना कानून था, उसमें सैक्शन 43 था। इस सैक्शन 43 में सबसे ज्यादा खामी यह थी कि सुप्रीम कोर्ट की जजमेंट के हिसाब से यह कहा गया था कि किसी इन्वेस्टिगेटिंग ऑफीसर को यह पावर नहीं देनी चाहिए कि वह उस इलेक्ट्रानिक डिवाइस से टेपरिकॉर्डिंग करे ।सैक्शन 43 के पुराने कानून में यह कहा गया था कि an officer, not below the rank of Additional Director General of Police or a police officer of equivalent rank reasonably determines that an emergency situation exists that involves immediate danger of death, he may authorise, in writing, the investigating officer to intercept such wire, electronic or oral communication, if an application for an order approving the reception is made in accordance with the provisions of Sub-Section (1) of Section 38, within 48 hours after interception has occurred/begins to occur. सुप्रीम कोर्ट की जजमेंट के हिसाब से investigating off officer को कोई पावर नहीं है कि वह इंटरसेप्शन करे। इंटरसेप्शन करने की पावर किसी इंडिपेंडेंट ऑफीसर को दी गई है। इंटरसेप्ट वहीं हो सकती है, जो इन्फोर्मेशन उस केस पर लागू होनी चाहिए। इस सैक्शन 43 मे जो किया गया है, यह सारी टेपरिकॉडिग करने से प्राइवेट कन्वर्सेशन भी रिकॉर्ड हो जाती है । इस गलत प्रोविजन को सैक्शन 46 से अमेंड किया गया है। इसके हिसाब से जो भी एविडेंस इंडियन टेलीग्राफ एक्ट के हिसाब से पकड़ी जाए, वह जायज मानी जाएगी। दूसरी बात जेटली साहब ने कन्फेशन के बारे में कहीं। इनके प्रोविजन से पहले A confession made before a police officer has been made admissible, यह सैक्शन 32 है, जिसमे उन्होने कहा कि Notwithstanding anything contained in the code—Cr.P.C. or Indian Evidence Act—but subject to the provisions of this srction, a confession made by a person before a police officer, not lower than the rank of Superintendent of Police, and recorded by such officer will be admissible in evidence. कानून की नजर में पुलिस ऑफीसर की जितनी भी एविडेंस रिकार्डिग होती है, वह बिल्कुल भी एडमिसिबल नहीं मानी जाती है। इस सैक्शन 32 को डिलीट करके, कन्फेशन का प्रोविजन यहां डिलीट किया गया है। इन दो सालों के दौरान एक अजीब सा केस सबके सामने आया था,जिसमें अजीब सा केस सबके सामने आया था,जिसमें अफरोज नाम का एक आदमी पकड़ा गया था। इसके लिए कहा गया कि इसने ब्रिटिश पार्लियामेंट, जो लंदन मे है और रियाल्टो टॉवर है, जो

4.00 P.M.

मेलबोर्न में है और इंडियन पार्लियामेंट पर 11 सितबर को अटैक करना था। उस आदमी को 2001 में गिरफ्तार किया गया। इसके लिए पुलिस ऑस्ट्रेलिया गई, इग्लैण्ड गई और अमरीका भी गई। इग्लैण्ड से आने के बाद उन्होने कहा कि इस आदमी के खिलाफ बहुत सख्त एविडेंस है और उन्होने इसे उठाकर पोटा के अंतर्गत बंद कर दिया। 2002 में पुलिस ने कोर्ट में बयान दिए और यह कहा कि इसके खिलाफ पोटा के चार्जस नहीं बनते है। यह अजीब सा प्रोविजन और अजीब सा कानून इन्होने बनाया, जिसमें लोगों को उठाकर दो-दो साल के लिए बंद कर दिया। मैं समझता हूं कि यह जो काला कानून रिपील किया गया है, वह बिल्कुल ठीक किया गया है इस कानून को ऑर्डिनेस के हिसाब से जल्दी-जल्दी रिपील करना चाहिए था। यह जो एक्ट बना है, इसमें सारे प्रोविजन्स है, जो एविंडेस की लिबर्टी को सेफगार्ड करने है। इसमें बेल के प्रोविजन्स भी है।बेल के प्रोविजन के अलावा यह भी पूरा मौका दिया जाता है कि वह कोर्ट के सामने पेश हो मैं समझता हूं कि इसमें वे सभी प्रोविज्न्स है,जो कानून की नजर से ठीक है।मैं इस बिल का समर्थन करता हूं।

MR. DEPUTY CHAIRMAN: Mr. Anand, before you conclude, I would like to say that you have made some remarks which have been denies by the Opposition. Will you kindly withdraw those remarks? *...(Interruptions)...*

SHRI R.K ANAND. Sir, I stand by those remarks. But *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Let us not go into further details.

SHRI PALI S. NARIMAN (Nominated): The hon. Leader of the Oppostion was felt hurt. Does not matter, whether it is right or wrong, please withdraw if you don't mind.

SHRI R.K. ANAND: The point is, that man was not travelling. What I am saying is that he is answerable to Parliament. Why did he go and take on the terrorists?

MR. DEPUTY CHAIRMAN: Let us not go into all the details. Are you withdrawing those remarks?

SHRI R.K. ANAND: I can withdraw the allegations, as far as the individual is concerned. But I am saying, why did the Minister go from here?

MR. DEPUTY CHAIRMAN: That is a different thing. That is altogether a different question. Are you withdrawing whatever ramarks you have made?

SHRI R.K. ANAND: I am withdrawing for the individual.

MR. DEPUTY CHAIRMAN: No; no. Some objection has been raised because you made certain remarks alleging certain *...(Interruptions)...* No, let there not be any *...(Interruptions).*

SHRI R.K. ANAND: Okay, I am withdrawing.

MR. DEPUTY CHAIRMAN: So, you are withdrawing it.

SHRI R.K. ANAND: Yes, I am withdrawing it.

Mr. DEPUTY CHAIRMAN: So, the remarks made by him are withdrawn.

SHRI SHIVRAJ V. PATIL: Sir, the hon. Member has very rightly withdrawn his statement. And, we had also said that if it has to be expunged, it should be expunged.

SHRI H.R. BHARDWAJ: We have very high regards for the leader.

SHRI SHIVRAJ V. PATIL: Yes, we have regards for all the hon. Members and the leader also. He was not saying anything. *...(Interruptions)* We would be very happy*...(Interruptions).*

MR. DEPUTY CHAIRMAN: The House will appeal to them that they should come back because it has been withdrawn. Now, Shrimati Sarla Maheshwari.

श्रीमती सरला माहेश्वरी :उपसभापति महोदय, आज मुझे खुशी है कि 21 मार्च, 2002 को भाजपा नीति सरकार के जिस काले विधेयक को हमने इसी सदन में परास्त किया था, भले ही कुछ समय के लिए वह काला विधेयक, उस सरकार की हठधर्मिता और जोर-जबर्दस्ती से चलते, कानून का रूप धारणा करके, हमारे देश के नागरिकों के साथ तांडव करता रहा, आज वही काला कानून हमेशा-हमेशा के लिए इतिहास का एक काला अध्याय भर बनकर रह जाएगा।

उपसभापति महोदय, मुझे 26 मार्च, 2002 का दिन याद आता है, जब एन.डी.ए. सरकार ने राज्य सभा में इस विधेयक पर पराजित हो जाने के बाद, संसद भवन के केन्द्रीय कक्ष में, संसद का संयुक्त सत्र बुलाया था, उस केन्द्रीय कक्ष में,जहां हमारी संविधान सभा बैठा करती थी, और जहां हमने, हम भारत के लोगों ने, स्वतंत्र और सार्वभौम देश के नागरिकों ने अपने आपको एक जनतांत्रिक संविधान सौंपा था, उसी संविधान सभा के कक्ष में,हमारी संविधान सभा की तमाम

मर्यादाओं को, तमाम मूल्यों को ताक पर रखकर, भाजपा सरकार ने संसद का संयुक्त सत्र बुलाया और यह साबित कर दिया कि उसके लिए विवेक की आवाज का कोई महत्व नहीं है, उसके लिए विपक्ष के सामूहिक विरोध का कोई मतलब नहीं है, उसके लिए भारत के व्यापक, जनतांत्रिक जनमत का कोई महत्व नहीं है। वह सिर्फ संख्या-बल की आक्रमकता के बल पर, संख्या बल के सहारे, अपनी हार को जीत में बदलने पर आमादा थी।

उपसभापति महोदय, उस दिन संसद के केन्द्रीय कक्ष में, एन.डी.ए. सरकार भले ही जीत गई थी, लेकिन मैं कहना चाहूंगी कि उस दिन हमारा लोकतंत्र पराजित हुआ था। तब "पोटा" के जरिए राज्य के निरंकुश अधिकारों को परवान चढ़ाया गया था। बदनाम "टाडा" भी उसके सामने पानी भरता था। हमारे माननीय कानूनविद, हमारे पूर्व विधि मंत्री हमारे सामने इतनी बड़ी-बड़ी बातें कर रहे थे कि जैसे अगर "पोटा" नहीं होता, तो पता नहीं क्या होता। दुर्भाग्य से विपक्ष के लोग चले गए है, मैं उन से पूछना चाहती थी कि जब "पोटा" था तब उस "पोटा" का इस्तेमाल आप ने किस के खिलाफ किया? आतंकवाद के खिलाफ किया या देश में जनतांत्रिक आदोंलन को चलाने वाले लोगों के खिलाफ किया? उपसभापति महोदय, एन.डी.ए. सरकार यह सब उस समय कर रही थी और इसलिए कर रही थी क्योंकि नैतिक दृष्टि से कमजोर एक सरकार अपने आप को इन दानवीय कानूनों से लैंस है। हमारे देश की जनता को भयाक्रांत करना चाहती थी। उपसभापति महोदय, वह हमारे देश के जनतांत्रिक इतिहास का एक बेहद शर्मनाक दृश्य था जब संसद का वह अधिवेशन बुलाया गया था। उस समय उसी शासक पार्टी के द्वारा शासिक एक राज्य सरकार और उस राज्य के मुख्य मंत्री किस पर आरोप लगा रहे थे? वे हमारे जनतंत्र की सर्वोच्च संस्था हमारी संसद पर आरोप लगा रहे थे। उन का कहना था कि जब तक इस संसद में चर्चा चलती रहेगी तब तक आतंकवाद की समस्या से निपटा नहीं जा सकेगा। उपसभापति महोदय, मैं कहना चाहूंगी कि उस काल में, उस एन.डी.ए. सरकार द्वारा एक संपूर्ण अभियान हमारे संसदीय जनतंत्र में भीतरघात करने का और हमारे संसदीय जनतंत्र को कमजोर करने के लिए चलाया गया था। हमारे माननीय सांसद भूले नहीं होगे कि वह ऐसा काल था जब एक-एक कर के हमारी तमाम संवैधानिक संस्थाओं की मर्यादाओं को मटियामेंट किया जा रहा था। हम भूले नहीं है वे दिन, जब एन.डी.ए. सरकार के काल मे हमारे देश के सांप्रदायिक फासीवादी ताकतों के हवाले किया जा रहा था। उपसभापति महोदय, मैं कहना चाहूंगी कि संसद का वह संयुक्त अधिवेशन गुजरात के जन-संहार की पृष्टभूमि में बुलाया गया था। उपसभापति महोदय, तत्कालीन सरकार ने पोटा को आतंकवाद के खिलाफ लड़ाई का ब्रह्मास्त्र बताया था। हम सभी जानते है कि ब्रह्मास्त्र का इस्तेमाल कब और कैसा किया जाता था। महोदय, मुझे शेक्सपियर याद आते है। शेक्सपियर ने कहा था"It is excellent to have the power of a giant, but is tyrannous to use it like a giant." उपसभापति महोदय, हम ने देखा कि किस प्रकार उस पूरे काल में एन.डी.ए. के शासनकाल में पोटा का इस्तेमाल

आतंकवाद के खिलाफ नहीं बल्कि किसानों और मजदूरों के खिलाफ जनतांत्रिक आंदोलनों के लिए उतरे लोगों की खिलाफ किया गया था और किस प्रकार पोटा का इस्तेमाल व्यक्तिगत राजनैतिक रंजिश से किया गया था। वायको जैसे व्यक्ति पोटा के पहले शिकार हुए और भी लोगों को इस के तहत पकड़ा गया। अरूण जेटली साहब अगर वे सारे आंकड़े हमारे सामने रख देते तो हमारी समझ में आता कि इस कानून की फिलॉस्फी क्या है, उस का दर्शन क्या है। महोदय, वह जिस आतंकवाद की वकालत कर रहे थे, वह जिस पोटा की वकालंत कर रहे थे, उस पोटा के तहत किस-किस को पकड़ा गया था। महोदय, मैं बताना चाहूंगी कि भारत में पोटा मे कुल 573 लोगों को गिरफ्तार किया गया था। इन 573 लोगों मे बस से ज्यादा 172 लोग अकेले गुजरात से पकड़े गए और इन में 99.99 प्रतिशत अल्पसंख्यक समुदाय के थे और एक व्यक्ति जो हिंदू था, उस को इसलिए पकड़ा गया क्योकि वह इन अल्पसंख्यकों के खिलाफ किए गए जुल्म और नाइंसाफी के खिलाफ आवाज उठा रहा था। उपसभापति महोदय, मैं कहना चाहूंगी कि गिरफ्तार किए गए लोगों मे कौन थे? अंधे लोग, 65 से 70 वर्ष के लोग, 10 से 12 वर्ष के बच्चे, मासूम और दुधमुंहे बच्चे, जिनके गिरफ्तार किया गया था अरूण जेटली साहब से मैं पूछना चाहूंगी कि वे मासूम बच्चे कौन से आतंकवादी थे, उनसे देश की सुरक्षा को किस तरह का खतरा पहुंच रहा था?

उपसभापति महोदय, इन्ही कारणों से आज भी संसद का वह संयुक्त अधिवेशन जिसके जरिए पोटा को पारित करवाया गया था, मेरी स्मृतियों में जनतंत्र पर प्राणांतक हमले के एक वीभत्स महोत्सव के रूप में नजर आता है । इस कानून का जिस प्रकार से प्रयोग किया गया, उससे आतंकवादियों को तो नहीं पकड़ा गया, आतंकवादियों का सफाया तो नहीं किया गया बल्कि उसने आतंकवादियों को और जन्म ही दिया। मैं कहना चाहूंगी कि यह पोटा प्रतीक बन गया था एक सांप्रदायिक सत्ता के चरम दानवीय रूप का और पोटा के खिलाफ संघर्ष नागरिकों के जनतांत्रिक अधिकार की लड़ाई का एक पर्याय बन गया था और इसलिए जब भारत के लोगों ने इस सांप्रदायिक गठबंधन की सरकार को सत्ता से उतारा तो देश के लोगों ने यह आशा भी की थी, यह अपेक्षा भी की थी कि जब इस सांप्रदायिक गठबंधन को परास्त किया गया है, तब उसके साथ-साथ कानून की किताबों से इस पोटा जैसे काले कानून की भी विदाई होगी। मैं यहां इस सदन में यह रेखांकित करना चाहूंगी कि यह जनता का जनादेश था कि एक सांप्रदायिक गठबंधन सरकार जाए तो उसी के साथ-साथ उस सरकार के दौरान हमारी जनता के खिलाफ जो तमाम आतताई और दमनकारी कानून लाए गए थे, वे आतताई और दमनकारी कानून भी उसके साथ-साथ हमेशा के लिए कानून की किताबों से बाहर हो जाएं। मैं कहना चाहूंगी कि यह जनता का सम्मान है, उस जनादेश का सम्मान है और इसलिए मैं, माननीय गृह मंत्री जी, आप जो यह विधेयक लेकर आए है, इसका मैं स्वागत करती हूं।

उपसभापति महोदय, यह सही है कि भारत के फौजदारी कानूनों मे ऐसे तमाम प्रावधान मौजूद है,जिनमें तमाम तरह के अपराधों से नपिटा जा सकता है। यह भी सच है कि आज की दुनिया में आतंकवाद का अपराध कोई साधारण अपराध नहीं रहा है। इस प्रकार के अपराधियों का एक अंतर्राष्ट्रीय पूरा नटवर्क है और निसंदेह यह एक पूरे राज संस्थान की तरह काम करता है, इसलिए जरूरी है कि आज के समय की जरूरत को समझते हुए हमारे जो मौजूदा कानून है, उन मौजूदा कानूनों को इस तरह समीचीन बनाया जाए ताकि आज की जो चुनौतियों है, आज की उन चुनौतियों से हम निपट सकें

उपसभापति महोदय,हमारी यह मान्यता है कि बुनियादी तौर पर हर निवारक नजरबंदी कानून जनतांत्रिक आत्मा पर एक बोझ होता है। किसी भी सभ्य जनतांत्रिक समाज को सबसे बड़ी चिंता इस बात से होती है कि वह नागरिकों के अधिकारो और राज्य के अधिकारों के बीच किस तरह संतुलन कायम करता है। राज्य का दमनकारी रूप जितना कम होगा, समाज का जनतांत्रिक और स्वस्थ्य उतना ही ज्यादा निखर कर आता है। जनतंत्र के प्रति अपनी दृढ़ निष्ठा के कारण ही हम लोग हर दमनकारी कानून का विरोध करते है और उस पर गहरी चिंता जाहिर करते है। अंततोगत्वा कोई भी कानून काल और सान से परे नहीं होता और कभी निरपेक्ष नहीं होता। वह किसी न किसी रूप में हमारे समय और समाज की उपज होता है। समाज के सामने जो चुनौतियां होती है, हमारे कानून उन्हीं चुनौतियों का प्रतिबिंबन करते है ऐसी स्थिति में एक नागरिक के अधिकार और नागरिक की सुरक्षा से जुड़े राज्य के कर्त्तव्य, दोनो के बीच में हमें संतुलन बैठाना होता है।

उपसभापति महोदय, हम अपने समाज को हिंसा और अपराधों से मुक्त करने के लक्ष्य से जितना दूर रहेंगे, राज्य का दमनकारी रूप उतना ही ज्यादा प्रगट होकर हमारे सामने आएगा। इसीलिए, उपसभापति महोदय, मैं कहना चाहती हूं कि यह नया कानून हमारे समाज की इन्हीं परिस्थितियों की उपज है। हम एक हिंसा मुक्त समाज आज भी नहीं बना पाए है। आज भी ऐसी ताकतें है, मैं उनसे इन्कार नहीं करती, आज भी ऐसी ताकते मौजूद है, जो हमारे राष्ट्र अस्थिर करना चाहती है, राष्ट्र को अस्थिर करने के षड्यंत्रों में लिप्त है और उनके तार दूर-दूर तक जुडे हुए है, इससे कोई इंकार नही कर सकता है। मैं यह कहना चाहूंगी कि आतंकवाद यदि सच्चाई है तो राज्य द्वारा उसका मुकाबला भी एक सच्चाई है और उसके साथ में हम कभी समझौता नहीं करेंगे। लेकिन, उपसभापति महोदय, मैं इसके साथ में यह भी कहना चाहूंगी कि जहां इस जरूरत को देखते हुए ऐसे जो निवारक कानून बनाए जाते है, उनका औचित्य सिद्ध होता है। लेकिन इस सदन को मैं इस बात से भी सावधान करना चाहूंगी कि हमारे देश में निवारक दमनकारी कानूनों का अपना एक लम्बा इतिहास रहा है। डी.आई.आर. मीसा, रासुका, टाडा, पोटा, पहले के इन तमाम निवारक कानूनों का हमारा, उपसभापति जी, अनुभव क्या रहा है,किस हद तक ये कानून हमारे देश की

आतंरिक सुरक्षा को मजबूत करने में सफल हुए? किस हद तक इनका दुरूपयोग किया गया, इसके तलपट को हमें जरूर देखना होगा।

उपसभापति जी, जब हम अपने अतीत के ऐसे अनुभवों पर गौर करते है तो हमारे सामने रॉलेट कानून से लेकर हाल के टाडा, पोटा कानूनों का पूरा इतिहास उपस्थित हो जाता है। आजादी की लड़ाई के दिनों में ही, उपसभापति महोदय, अंग्रेजों के रॉलेट एक्ट और उनके डिफेंस ऑफ इंडिया एक्ट का हमारे राष्ट्रीय आंदोलन के नेताओं ने गहरी निष्ठा के साथ विरोध किया था कि एक जनतांत्रिक समाज के साथ उनका कोई रिश्ता नहीं हो सकता और हमने देखा, उपसभापति महोदय, कि किस तरह अंग्रेजों के जमाने मे उन काले कानूनों का इस्तेमाल हमारे राष्ट्रीय आंदोलन के खिलाफ किया गया। आजादी के बाद भी, उपसभापति महोदय, नासा, मीसा, डी.आई.आर. की तरह के कानूनों का और लगभग उन्ही की तर्ज पर टाड़ा का भी दुरूपयोग किया जाता रहा। खास तौर पर कम्यूनिस्टों को तो जब कभी देशद्रोही घोषित करके जेलों में डाला जाता रहा है हम सबसे ज्यादा भुक्तभोगी रहे है।

उपसभापति महोदय, मैं यहां यह भी कहना चाहूंगी कि आज जब हम यहां बात कर रहे है कि किस तरह दुरूपयोग हो रहा है, सुंदूर राजस्थान में, राजस्थान के किसान पानी के लिए आंदोलन कर रहे है और वहां की भाजपा सरकार पानी देने की बजाय उन किसानो के जवाब गोलियों से दे रही है। रासुका के तहत, राष्ट्रीय सुरक्षा कानून के तहत, किसान नेताओं को गिरफ्तार किया जा रहा है। हेतराम बेनीवाल किसानों के इतने बड़े नेता है। श्योपत सिंह हमारे संसद के लोक सभा के सांसद रहे है, उनको गिरफ्तार किया गया। वे राष्ट्रीय सुरक्षा के लिए खतरा है? और इसलिए, उपसभापति महोदय, मैं यह कहना चाहूंगी, मैं यह दावे के साथ में नहीं कह सकती कि ये कानून वास्तव में राष्ट्र-विरोधी गतिविधियों पर अंकुश लगाने में कितने कारगर साबित हो पाएंगे। लेकिन इन कानूनों का प्रयोग हमारे देश के जनतांत्रिक आंदोलनों को कुचलने में, गरीब और उत्पीड़ित जनता की आवाज के दमन मैं कतई नहीं होना चाहिए, इसकी हमें अपने अतीत के अनुभवों से जरूर सीख लेनी।

उपसभापति जी, पिछले दिनों जब पोटा को लेकर संयुक्त अधिवेशन हुआ था, उसमें कांग्रेस दल की अध्यक्ष सोनिया गांधी ने ही अपने भाषण में टाडा के दिनों के अपने अनुभवों का जिक्र करते हुए कहा था, मैं उन्हें उद्धृत करना चाहूंगी कि "टाडा कानून की अवधि के दौरान इसके अंतर्गत हिरासत में लिए गये 76,000 लोगों मे से लगभग केवल एक हजार लोगों को ही सजा सुनाई जा सकी। आतंकवाद से बुरी तरह प्रभावित राज्य जम्मू और कश्मीर में टाडा एकदम पूर्ण रूप से विफल रहा। इस रिकॉर्ड को देखते हुए कांग्रेस यह स्वीकार करने को तैयार है कि टाडा अपने लक्ष्य को प्राप्त करने में असफल रहा"। इसके साथ ही तब उन्होने यह भी कहा था कि गलतियों से सीखने हेंतु

हमारा दिमाग खुला हुआ है। शायद, अरूण जेटली जी होते तो दोबारा सोचने पर विचार करते कि पोटा कहां तक कामयाब हुआ है।

उपसभापति महोदय, आज जब यू.पी.ए. सरकार पोटा को हटाने का स्वागत योग्य कदम उठा रही है और उसके साथ ही unlawful Activites (prevenation) aAmendment bill ला रही है। तब सरकार से मैं सिर्फ इतना ही कहना चाहूंगी कि इसमे पिछले दिनों के जो निवारक नजरबंदी कानून है उन कानूनों से आपको सीख लेनी चाहिए और तद्नुरूप इस नए विधान में इस तरह से आपको संशोधन करना चाहिए कि हमारी आम जनता के जो जनतांत्रिक अधिकार है उन जनंतत्रिक अधिकारों पर हमला न हो, और उसके साथ ही हमारी राष्ट्र की सुरक्षा के लिए जो तत्व खतरनाक है जो आतंकवादी लोग है, जरूर उनके खिलाफ सशक्त कार्रवाई कर सकें, इसके लिए मैं जरूर कहना चाहूंगी। मैं माननीय गृह मंत्री जी का ध्यान इस बात की ओर भी दिलाना चाहूंगी, मैंने उनके इस विधेयक को देखा है, मैं कहना चाहूंगी कि इसके अध्याय-4 के क्लॉज-19 में जहां उन्होने यह कहा है कि 'Whoever voluntarily harbours or conceals ..." वहां मैं यह कहना चाहूंगी कि यह "वोल्यूंटरी" शब्द का बहुत दूरूपयोग हो सकता है, यह बहुत खतरनाक भी हो सकता है और इसलिए यह वोल्यूंटरी शब्द को हटाकर यहां पर आप इसका " intensely" शब्द रख दें, तो ज्यादा उचित रहेगा।

उपसभापति महोदय, अन्त में मैं आपसे यह कहना चाहूंगी कि शासन के बारे में जनता की अवधारणा को बदलने के लिए बहुत जरूरी होता है कि आप ईमानदार कोशिशें करें। लोग इस कहावत को न दोहराएं कि जो लंका जाता है वह रावण बन जाता है। उपसभापति महोदय, शेक्सपीयर की शब्दावली मे मैं यह कहना चाहूंगी कि सत्ता की कुर्सी is like "A barder chair that fits all buttocks" इसे कोई भी सरकार अपने कार्यो के द्वारा ही बदल सकती है। इसलिए कानून की असली परीक्षा उसकी लिखावट मे नहीं बल्कि उसके व्यवहार में होगी। उपसभापति महोदय, मैं आशा करती हूं कि हमारी यह यू.पी.ए. सरकार अपने पुराने अतीत से सबक लेगी और आज की चुनौतियों का सही ढंग से मुकाबला करेगी। मैं आशा करती हूं कि यह विधेयक इस मंशा को पूरा करेगा। धन्यवाद।

श्री उपसभापति :धन्यवाद, आपने एलौटिड टाइम के अंदर कम्पलीट किया है।

SHRI SANTOSH BAGRODIA (Rajasthan): Sir, please, allow me a minute. What Shrimati Sarla Maheshwari had said was that in Rajasthan राजस्थान में गंगानगर के किसान आंदोलन के सिलेसिले में राष्ट्रीस सुरक्षा कानून में गिफ्तार श्री बल्लभ कोचर को जेल में रखा हुआ है। इनके बेटे को भी इनसे नहीं मिलने दे रहे है और जो कांग्रेस के नेता लोग उनसे मिलने जाते है, उनको भी नहीं मिलने दिया जा रहा है। उनके ऊपर

मानसिक और शारीरिक अत्याचार किया जा रहा है और इसी रेफरेंस में मैं आपको यह बतलाना चाहता हूं कि यह बहुत जरूरी है कि यह जो बिल आया है उसको हटा देना चाहिए।

† **श्री शाहिद सिद्दिकी** (उत्तर प्रदेश) **:**डिप्टी चेयरमैंने साहिब, आज जहां मुझे थोड़ी सी खुशी है, वहां बहुत भरे हुए मन के साथ और बहुत दुख के साथ आज मै यहां खड़ा हुआ हूं। खुशी इस बात की है कि एक काला कानून, जो टाडा की कोख से जन्मा था-पोटा, टाडा के खिलाफ हमने बहुत लम्बी लड़ाई लड़ी थी टाड़ा को समाप्त करने के लिए, उसके बाद यह पोटा लाया गया था जिसका विरोध हम सब ने किया था, पूरे देश ने किया था, पूरे लोकतांत्रिक आंदोलन ने किया था, पार्लियामेंट ने किया था। लेकिन आज उसी पोटा की कोख से एक और कानून सामने आ रहा है, जिसका आने वाला समय में आप लोग देखेंगे कि जो आज पोटा के बारे में हम लोग दुख व्यक्त कर रहे है, जो टाडा के बारे में हमारा तजुर्बा हुआ है, वही तजुर्बा हमें इस यू.पी.ए. के बारे में होने वाला है। आज जो लोग समर्थन कर रहे है, जिस तरह से वाइको जी ने समर्थन किया था पोटा का, उनको इसकी कीमत चुकानी पड़ेगी। आज जो हमारे दल है, मुझे दुख इस बात का है कि वे दल जो लोकतांत्रिक आंदोलन में आगे रहते है वे दल जिन्होने हमेशा लोकतंत्र की लड़ाई लड़ी, जिन्होने अल्पंसख्यकों की लड़ाई लड़ी, वे भी आज अपने राजनीतिक कारणों से इस काले कानून का समर्थन कर रहे है, इस बात का मुझे दुख है। उपसभापति महोदय, बचपन में हम सुना करते थे कि "The king is dead, long live the king" आज हम देखते यह है कि POTA is dead, long live POTA" अलग-अलग रूप में वही शराब नई-नई बोतलों में हमारे सामने आ रही है, नए-नए तरीके से आ रही है।मेरे साथ जेटली साहब चले गये। उन्होने बड़े जोर-शोर से अपनी बात रखी थी। मैं उनकी बात का समर्थन करता, मैं उनकी बात से सहमत होता, हम भी किसी तरह से देश की सुरक्षा के सवाल पर पीछे नहीं है, जहां तक टेरेरिस्टों से लड़ने का सवाल है। लेकिन क्या जेटली साहब नहीं जानते कि इन एक्ट्स का इस्तेमाल चाहे वह "पोटा" रहा या "टाडा" रहा, इनका इस्तेमाल टेरेरिस्टों से लड़ने के लिए नहीं किया गया, टेरेरिज्म को रोकने के लिए नहीं किया गया, टेरेरिस्टों को सजा देने के लिए नहीं किया गया? अगर ऐसा किया गया होता तो "टाडा" वापस लाने की जरूरत नहीं पड़ती, सारा देश " टाडा" के साथ होता। अगर ऐसा होता तो "पोटा" लाने की जरूरत नहीं पड़ती, लेकिन आज जरूरत पड़ी है, तो इसलिए कि इन कानूनों से टेरेरिज्म को नहीं रोका गया है, इनका मिसयूज हुआ है मैं कहना चाहता हूं कि जो आप नया अमेंडमेंट ला रहे है, इसका भी मिसयूज वही पुलिस, वही एडमिनिस्ट्रेशन, वही सिस्टम बार-बार करेगा, उन्हीं लोगों के खिलाफ, अल्पसंख्यकों के खिलाफ, पिछडों के खिलाफ, गरीबों के खिलाफ, दलितों के खिलाफ, उसी तरह से किया जायेगा और उसको रोने वाला कोई नहीं होगा। मैं आपसे कहना चाहता हूं कि जो आज आप अन-लाफुल एक्टीविटीज (प्रिवेंशन) अमेंडमेंट एक्ट ला रहे है, यह एक तरह

† Translation of urdu speech.

से "पोटा" का एक बहुत भौडा-सा रूप हमारे सामने आ रहा है। हमारे सामने इसकी बहुत तकलीफदेह शक्ल आ रही है। दिक्कत क्या है? दिक्कत आखिरकार यह होती है कि टेरेरिज्म डेफिनेशन कौन करेगा? कौन बतायेगा कि कौन टेरेरिस्ट है? क्योंकि "पोटा" में जो गड़बड़ थी, वह गड़बड़ इस बात की नहीं थी कि इन एक्ट्स में कोई खराबी थी, इन एक्ट्स में खराबी नहीं थीं, बल्कि इनका जो इस्तेमाल होता था, इनके जो इस्तेमाल करने वाले थे, इनके जो इंटरप्रेशन करने वाले थे, इनकी जो एप्लीकेशन करने वाले थे, उनकी नीयतें साफ नहीं थीं। क्या वे नीयतें साफ हो गयी है? टेरेरिस्ट कौन है? इसका फैसला पहले तो फिर भी "पोटा" में पुलिस सुनरिटेंडेंट के पास जाता था, वह "पोटा" लगाता था,आज आप जब इसको सीआरपीसी, आईपीसी का हिस्सा बना रहे है तो नीचे बैठा हुआ पुलिस का इन्सपैक्टर क्या किसी के घर में जहां सब्जी काटने वाली छुरी मिलेगी, क्या उसको इंटनप्रेट नहीं कर सकता? जैसा कि आज तक किया गया है। झाखंउ का गया सिंह, 12 साल का लड़का, उसको "पोटा" में बंद कियाद गया, क्या वह टेरेरिस्ट था? झारखंउ के 82 साल के बूढे को "पोटा" में बंद किया, क्या वह टेरेरिस्ट था? यह इटरप्रटेशन की बात है। आप कहते है कि "पोटा" खत्म कर दिया। मैं आपको बताना चाहता हूं कि गुजरात के अंदर क्या हो रहा है। गुजरात में पांड्या जी का कत्ल हुआ था। उसके बाद चार लड़कों को "पोटा" में पकड़ा गया और अभी तक 80 लोग "पोटा" में पकड़े जा चुके है। लेकिन हाल में अभी, 21 नवम्बर को उनके दो वकीलों को "पोटा" में गिरफ्तार कर लिया गया। आप कहते है कि "पोटा" खत्म कर दिया गया है, जबकि "पोटा" का इस्तेमाल हो रहा है वह कहते कि पिछले जो लोग पकड़े गये थे, उन पर "पोटा" की एप्लीकेशन होती है। आप जब तक "पोटा" को वापस नहीं करेंगे पोटा को खत्म नहीं करेंगे, तब तक बात नहीं बनेगी । इसलिए मैं सरकार से आपके माध्यम से कहना चाहता हूं कि "पोटा" के जितने पिछले केसेज है, उनको फौरन खत्म किया जाये, उनको महीने-भर के अंदर रिव्यू किया जाये। ऐसा हो सकता है, अगर आपकी नीयतं हो, अगर आप चाहते हों।

दूसरी चीज, जिसकी मैं बात कह रहा था डेफिनेशन टेरेरिज्म की। इसमें जो आप अमेंडमेंट ला रहे है, इस अमेंडमेंट में आपने जिस तरह से टेरेरिज्म को डिफाइन किया है, इतना वाइड कर दिया है, इतना वॉस्ट कर दिया है, उनमें मिस इंटरप्रटेशन होगी, हर हाल में होगी, उसका मिसयूज होगा। इसलिए हम इस अमेंडमेंट का पूरी तरह से विरोध करते है। खासतौर पर, जो हमारे लेफ्ट फ्रंट के फ्रेंड्स है, मैं उनसे कहना चाहता हूं कि आपको इसकी कीमत आने वाले समय में चुकानी पड़ेगी। आने वाले समय में वाइको वाला हाल आपका और हमारा होगा, अगर हम इस कानूनों को इस तरह से चलने की इजाजत देंगे। मुझे सबसे ज्यादा दुख इस बात की है कि इन लोगों ने इसका विरोध नहीं किया। राजनैतिक कारण होते है, लेकिन जब इस तरह के मामले आते है, जब देश का सवाल होता है, किसी एक पार्टी का सवाल नहीं होता है। हमने "टाडा" की कीमत चुकाई है। इस देश में टेरेरिज्म जो बढ़ा है, वह "टाडा" की वजह से ही बढ़ा है, पोटा की वजह से ही बढ़ा है। ....(व्यवधान)..

شری شاہد صدیقی "اتر پردیش": ڈپٹی چیئرمین صاحب، آج جہاں مجھے تھوڑی سی خوشی ہے وہاں بہت بھرے ہوئے من کے ساتھ اور بہت دکھ کے ساتھ آج میں یہاں کھڑا ہوا ہوں۔ خوشی اس بات کی ہے کہ ایک کالا قانون جو ٹاڈا کی کوکھ سے جنا تھا۔ پوٹا، ٹاڈا کے خلاف ہم نے بہت لمبی لڑائی لڑی تھی ٹاڈا کو ختم کرانے کے لئے اس کے بعد یہ پوٹا لایا گیا تھا۔ جس کا ورودھ ہم سب سے کیا تھا پورے دیش نے کیا تھا، پورے لوک تانترک آندولن نے کیا تھا، پارلیمنٹ نے کیا تھا۔ لیکن آج اسی پوٹا کی کوکھ سے ایک اور قانون سامنے آرہا ہے، جس کا آنے والے وقت میں آپ لوگ دیکھیں گے کہ جو آج پوٹا کے بارے میں ہم لوگ دکھ ظاہر کر رہے ہیں، جو ٹاڈا کے بارے میں ہمارا تجربہ ہوا ہے وہی تجربہ ہمیں اس یو اے پی اے کے بارے میں ہونے والا ہے۔ آج جو لوگ سمرتھن کر رہے ہیں جس طرح سے وائیکوجی نے سمرتھن کیا تھا پوٹا کا ان کو اس کی قیمت چکانی پڑے گی۔ آج جو ہمارے دل ہیں مجھے دکھ اس بات کا ہے کہ وہ دل جو لوک تانترک آندولن میں آگے رہتے ہیں، وہ دل جنہوں نے ہمیشہ لوک تنتر کی لڑائی لڑی، جنہوں نے اقلیتوں کی لڑائی لڑی وہ بھی آج اپنے راج نیتک کارنوں سے اس کالے قانون کا سمرتھن کر رہے ہیں، اس بات کا مجھے دکھ ہے۔

اپ سبھا پتی مہودے، بچپن میں ہم سنا کرتے تھے کہ "The king is dead, long live the king" آج ہم دیکھتے ہیں کہ "POTA is dead, long live POTA!" الگ الگ روپ میں وہی شراب نئی نئی بوتلوں میں ہمارے سامنے آرہی ہے، نئے نئے طریقے سے آرہی ہے۔

میرے ساتھی جیٹلی صاحب چلے گئے۔ انہوں نے بڑے زور شور سے اپنی بات رکھی تھی۔ میں ان کی بات کا سمرتھن کرتا، میں ان کی بات سے سہمت ہوتا، ہم بھی کسی طرح سے دیش کی سرکشا کے سوال پر پیچھے نہیں ہیں، جہاں پر دہشت گردوں سے لڑنے کا سوال ہے۔ لیکن کیا جیٹلی صاحب نہیں جانتے کہ ان ایکٹ کا استعمال چاہے وہ پوٹا رہا ہو یا ٹاڈا رہا، ان کا استعمال دہشت گردوں سے لڑنے کے لئے نہیں کیا گیا، دہشت گردی کو روکنے کے لئے نہیں کیا گیا، دہشت گردوں کو سزا دینے کے لئے نہیں کیا گیا؟ اگر ایسا کیا گیا ہوتا تو ٹاڈا واپس لینے کی ضرورت نہیں پڑتی، سارا دیش ٹاڈا کے ساتھ ہوتا۔ اگر ایسا ہوتا تو پوٹا لانے کی

ضرورت نہیں پڑتی، لیکن آج اگر ضرورت پڑی تو اس لئے کے ان قانونوں سے دہشت گردی کو نہیں روکا گیا ہے ان کا مس یوز ہوا ہے۔ میں کہنا چاہتا ہوں کہ یہ جو آپ نیا امینڈمنٹ لا رہے ہیں، اس کا بھی مس یوز وہی پولیس، وہی ایڈمنسٹریشن، وہجی سسٹم بار بار کریگا۔ انہی لوگوں کے خلاف، اقلیتوں کے خلاف، پچھڑوں کے خلاف، غریبوں کے خلاف، دلتوں کے خلاف، اسی طرح سے کیا جائے گا اور ا سے روکنے والا کوئی نہیں ہوگا۔ میں آپ سے کہنا چاہتا ہوں کہ جو آج آپ ان لاء فل ایکٹیویٹیز (پریونشن) امینڈمنٹ ایکٹ لا رہے ہیں۔ یہ ایک طرح سے پوٹا کا ایک بہت بھونڈا سا روپ ہمارے سامنے آرہا ہے۔ ہمارے سامنے اس کی بہت تکلیف دہ شکل آرہی ہے۔ وقت کیا ہے؟ وقت آخر کار یہ ہوتی ہے کہ دہشت گردی کی ڈیفینیشن کون کریگا؟ کون بتائے گا کہ کون دہشت گرد ہے؟ کیوں کہ پوٹا میں جو گڑبڑ تھی وہ گڑبڑ اس بات کی نہیں تھی کہ ان ایکٹ میں کوئی خرابی تھی، ان ایکٹ میں خرابی نہیں تھی بلکہ ان کا جو استعمال ہوتا تھا، ان کے جس استعمال کرنے والے تھے، ان کے جو انٹرپریٹیشن کرنے والے تھے، ان کی جو ایپلیکیشن کرنے والے تھے ان کی نیتیں صاف نہیں تھیں، کیا وہ نیتیں صاف ہو گئی ہیں؟ دہشت گرد کون ہے؟ اس کا فیصلہ پہلے تو پھر بھی پوٹا میں پولیس سپرینٹنڈنٹ کے پاس جاتا ہے، وہ پوٹا لگاتا تھا، آج آپ جب اس کو سی آر پی سی، آئی پی سی کا حصہ بنا رہے ہیں، تو نیچے بیٹھا ہوا پولیس کا انسپکٹر کیا کسی کے گھر میں جہاں سبزی کاٹنے والی چھری ملے گی، کیا اس کو انٹرپریٹ نہیں کر سکتا؟ جیسا کہ آج تک کیا گیا ہے۔ جھارکھنڈ کا گیا سنگھ، بارہ سال کا لڑکا اس کو پوٹا میں بند کیا گیا، کیا وہ دہشت گرد تھا؟ جھارکھنڈ کے 82 سال کے بوڑھے کو پوٹا میں بند کیا گیا، کیا وہ دہشت گرد تھا؟ یہ انٹرپریٹیشن کی بات ہے۔ آپ کہتے ہیں کہ پوٹا ختم کر دیا۔ میں آپ کو بتانا چاہتا ہوں کہ گجرات کے اندر کیا ہو رہا ہے۔ گجرات میں پانڈیا جی کا قتل ہوا تھا۔ اس کے بعد چار لڑکوں کو پوٹا میں پکڑا گیا اور ابھی تک 80 اسی لوگ پوٹا میں پکڑے جا چکے ہیں۔ لیکن حال میں ابھی 21 نومبر کو ان کے دو وکیلوں کو پوٹا میں گرفتار کیا گیا۔ آپ کہتے ہیں کہ پوٹا ختم کر دیا گیا ہے جب کہ پوٹا کا استعمال ہو رہا ہے۔ وہ کہتے ہیں کہ پچھلے جو لوگ پکڑے گئے تھے ان پر پوٹا کی ایپلی کیشن ہوتی ہے آپ جب تک پوٹا کو واپس نہیں کریں گے پوٹا ختم نہیں کریں گے تب تک بات نہیں بنے گی۔ اسی لئے

میں اس سرکار سے آپ کے توسط سے کہنا چاہتا ہوں کہ پوٹا کے جتنے پچھلے کیسیز ہیں، ان کو فورا ختم کیا جائے ان کو مہینے بھر کے اندر ریوو کیا جائے۔ ایسا ہو سکتا ہے، اگر آپ کی نیت ہو، اگر آپ چاہتے ہوں۔

دوسری چیز، جس کی میں بات کر رہا تھا ڈیفینیشن دہشت گردی کی۔ اس میں جو آپ امینڈمنٹ لا رہے ہیں، اس امینڈمنٹ میں آپ نے جس طرح سے دہشت گردی کو ڈیفائن کیا ہے۔ اتنا وائڈ کر دیا ہے، اتنا واسٹ کر دیا ہے، اس میں مس انٹرپریٹیشن ہوگی، ہر حال میں ہوگی اس کا مس یوز ہوگا۔ اس لئے ہم اس امینڈمنٹ کا پوری طرح سے ورودھ کرتے ہیں۔ خاص طور پر، جو ہمارے لیفٹ فرنٹ کے فرینڈس ہیں میں ان سے کہنا چاہتا ہوں کہ آپ کو اس کی قیمت آنے والے وقت میں چکانی پڑے گی۔ آنے والے وقت میں وائیکو والا حال آپ کا اور ہمارا ہوگا، اگر ہم ان قانونوں کو اس طرح سے چلنے کی اجازت دیں گے۔ مجھے سب سے زیادہ دکھ اس بات کا ہے کہ ان لوگوں نے اس کا ورودھ نہیں کیا۔ راج نیتک کارن ہوتے ہیں، لیکن جب اس طرح کے معاملے آتے ہیں، جب دیش کا سوال ہوتا ہے، کسی ایک پارٹی کا سوال نہیں ہوتا۔ ہم نے ٹاڈا کی قیمت چکائی ہے۔ اس دیش میں دہشت گردی جو بڑھی ہے، وہ ٹاڈا کی وجہ سے ہی بڑھی ہے، پوٹا کی وجہ سے ہی بڑھی ہے۔ ہماری سینسی وٹی ....مداخلت....

SHRI N. JOTHI (Tamil Nadu): I have an objection. Without knowing what has happened in Vaiko's case, he is talking like this. *..(Interruptions)..*

SHRI R. SHUNMU GASUNDARAM (Tamil Nadu): He is wrong. *..(Intenvptions):*

MR. DEPUTY CHAIRMAN: He has made a general reference. *..{Interruptions)..*

SHRI N. JOTHI: I am going to speak on that. *..(Interruptions)..*

MR. DEPUTY CHAIRMAN: Mr. Siddiqui, when you speak, you can clarify. *..(Interruptions)..*

SHRI R. SHUNMUGASUNDARAM: He is wrong. I have got the judgement. *..(Interruptions)..*

SHRI SHAHID SIDDIQUI: I know my words about Vaiko. Let us not sidetrack the issue. ..(Interruptions) .. Let us not sidetrack the issue. *..(Interruptions)..*

MR. DEPUTY CHAIRMAN: You just carry on.

SHRI SHAHID SIDDIQUI: I do not want to go into that case. दूसरी बात मैं यह कहना चाहता हूं कि टाडा और पोटा जो आए थे, वे समयबद्ध थे, एक पीरियड़ के लिए थे, दो-साल के लिए, तीन साल के लिए, उसके बाद उनका रिव्यू होता था। लेकिन आज जो आप यह ला रहे है, इसका रिव्यू नहीं होगा, यह समयबद्ध नहीं है। आप इसको सीआरपीसी का, आईपीसी का, लीगल सिस्टम का हिस्सा बना रहे है और यह बहुत खतरनाक है। इस पर आप लोगों को ध्यान देना चाहिए। इस सदन को ध्यान देना चाहिए कि इस तरह से अगर यह कानून का हिस्सा बन जाता है तो फिर इसका रिव्यू नहीं होता। फिर नॉर्मल कोर्स में इसका एप्लीकेशन होता है। आज अगर कोई पोटा में पकड़ा जाता है तो फिर शोर मचता है, चाहे वह गरीब आदमी हो। सवाल उठता है कि कितने लोग झारखंड में पोटा में पकड़े गए, कितने लोग गुजरता में पोटों में पकड़े गए? यहां बहस होती है लेकिन जब आप इसे लीगल सिस्टम का हिस्सा बना देंगे तो फिर कोई पूछने वाला नही होगा, कोई बताने वाला नहीं होगा कि कितने केसिज इस यूएपीए में हुए। यह जो यूपीए नें हमें तोहफा दिया है, यूएपीए का,मुझे लगता है कि इनको कुछ नाम पंसद आ गया है। यूपीए सरकार ने जो यूएपीए आगे रखा है, इसका गलत इस्तेमाल इस तरह से भी होगा कि यह हमारे लीगल सिस्टम का हिस्सा बन जाएगा। इसका कोई कंट्रोल नहीं रह जाएगा वरना रिव्यू करने की बात होनी चाहिए। बहुत जल्दी में यह कानून लाया गया है। मैं विरोध की इस बात से सहमत हूं कि इस कानून को बहुत जल्दी में यह कानून लाया गया है। आप पोटा खत्म कर दीजिए। कोई आसमान नहीं गिर जाएगा, अगर कुछ दिन के लिए ऐंटी टेरेरिस्ट एक्ट नहीं होगा। 1995 से लेकर 2000 तक कोई ऐंटी टेरेरिस्ट कानून नहीं था। इसका मतलब यह नही था कि टेरेरिज्म बढ़ गया या पोटा बनने के बाद टेरेरिज्म खत्म हो गया। हमें इस धोखे को भी निकालना होगा कि यह कोई जादू का चिराग है, कोई ऐसा डंडा है जिससे आप टेररिज्म से लड लेंगें। इसलिए कुछ दिन के लिए इसको आप स्टैंडिंग कमेटी को दीजिए। इस अमेंडमेंड को स्टेंडिंग कमेटी को भेजना चाहिए। आप जल्दी में काम कर रहे है और सिर्फ इसलिए

† Transliteration of Urdu Speech.

कर रहे है आपको इनका डर है। आपको डर यह है कि कहीं ये आपके ऊपर आरोप न लगा दें कि आपने टेरेरिज्म को मौका दे दिया। आपने पोटा खत्म करके टेररिज्म को बढ़ावा दे दिया। आप इनके डर से इस कानून को जल्दी जल्दी ला रहे है। इनसे मत डरिए, आप सच्चाई पर चालिए। आप मुसलमानों को खुश करने के लिए कुछ मत कीजिए, आप संघ परिवार की चापलूसी के लिए कुछ मत कीजिए, उनके appeasement के लिए कुछ मत कीजिए। यह जो जल्दी-जल्दी आप अमेंडमेंट ला रहे है, इससे संघ परिवार का appeasement होता है और मैं आपसे यह कहना चाहता हूं कि इससे बहुत सारे नुकसान होने वाले है इसलिए इसको लीगल सिस्टम का हिस्सा आप मत बनाइए। तीसरी बात मैं यह कहना चाहता हूं कि जो रिव्यू कमेटी का एक प्रोसीजर था, वह इस अमेंडमेंट में मौजूद नहीं होगा जिस तरह से हमारा लीगल सिस्टम चलता है-मुझे तो बड़ा दुख हुआ, जब हमारे सत्ता पक्ष के लोग, जब हमारे होम मिनिस्टर साहब ने बार-बार विपक्ष को समझाया कि हमने कोई कमी नहीं की है, हमने तो जो पोटा में था, वहीं यहां पर रखा है। जब उन्होने ये बातें कहीं तो मुझे बहुत आश्चर्य हुआ कि आप उन्हे यह समझा रहे है कि ऐवीडेंस एक्ट में भी हमने कोई बहुत ज्यादा गड़बड़ नहीं की है। जैसा आप चाहते है, सब कुछ वैसा ही है। यह तो बड़ी खतरनाक बात है क्योंकि आपने इसमें रिव्यू कमेटी भी नहीं दी है। आपने रिव्यू का भी प्रोसीजर नहीं दिया है। जिस तरह से ऐवीडेंस लिया जाता है,जिस तरह से लोगों से पुलिस वाले मारकर, पीटकर ऐवीडेंस लेते है * दूसरी तरफ ये चाहते हें कि पुलिस किसी को भी मारकर, पीटकर इकबाल-ए-जुर्म करा लेती है, उसको ऐवीडेंस के तौर पर पेश किया जाए।

शری شاہد صدیقی : I do not want to go into that case دوسری بات میں کہنا چاہتا ہوں کہ ٹاڈا اور پوٹا جو آئے تھے وہ سمے بدھ تھے، ایک ٹائم پیریڈ کے لئے تھے۔ دو سال کے لئے، تین سال کے لئے، اس کے بعد ان کا ریویو ہونا تھا۔ لیکن آج جو آپ لا رہے ہیں، اس کا ریویو نہیں ہوگا، یہ سمے بدھ نہیں ہے۔ آپ اس کو سی آر پی سی کا، آئی پی سی کا، لیگل سسٹم کا حصہ بنا رہے ہیں اور یہ بہت خطرناک ہے۔ اس پر آپ لوگوں کو دھیان دینا چاہئے۔ اس سدن کو دھیان دینا چاہئے کہ اس طرح سے اگر یہ قانون کا حصہ بن جاتا ہے تو پھر اس کا ریویو نہیں ہوگا۔ پھر نارمل کورس میں اس کا اپیلی کیشن ہوتا ہے۔ آج اگر کوئی پوٹا میں پکڑا جاتا ہے تو پھر شور مچتا ہے، چاہے وہ غریب آدمی ہو۔ سوال اٹھتا ہے کہ کتنے لوگ جھارکھنڈ میں پوٹا میں پکڑے گئے، کتنے لوگ گجرات میں پوٹا میں پکڑے گئے؟ یہاں بحث ہوتی ہے۔ لیکن جب آپ لیگل سسٹم

*Expunged as ordered by iha Chair.

کا حصہ بنا دیں گے تو پھر کوئی پوچھنے والا نہیں ہوگا، کوئی بتانے والا نہیں ہوگا کہ کتنے کیسز یو اے پی اے میں ہوئے۔ یہ جو یو اے پی اے نے ہمیں تحفہ دیا ہے، یو اے پی اے کا، مجھے لگتا ہے کہ ان کو کچھ نام پسند آگیا ہے۔ یو پی اے سرکار نے جو یو اے پی اس آگے رکھا ہے، اس کا غلط استعمال اس طرح سے بھی ہوگا کہ یہ ہمارے لیگل سسٹم کا حصہ بن جائے گا۔ اس کا کوئی کنٹرول نہیں رہ جائے گا ورنہ ریویو کرنے کی بات ہونی چاہئے۔ بہت جلدی میں یہ قانون لایا گیا۔ میں ورودھ کی اس بات سے سہمت ہوں کہ اس قانون کو بہت جلدی میں لایا گیا ہے۔ آپ پوٹا ختم کر دیجئے۔ کوء آسمان نہیں گر جائے گا، اگر کچھ دن کے لئے اینٹی ٹیررزم ایکٹ نہیں ہوگا۔ 1995 سے 2000 تک کوئی اینٹی ٹیررسٹ قانون نہیں تھا۔ اس کا مطلب یہ نہیں تھا کہ دہشت گردی بڑھ گئی یا پوٹا بننے کے بعد دہشت گردی ختم ہوگئی۔ ہمیں اس دھوکے کو بھی نکالنا ہوگا کہ یہ کوئی جادو کا چراغ ہے، کوئی ایسا ڈنڈا ہے جس سے آپ دہشت گردی سے لڑلیں گے۔ اس لئے کچھ دن کے لئے اس کو آپ اسٹینڈنگ کمیٹی کو دے دیجئے۔ اس امینڈمینٹ کو اسٹینڈنگ کمیٹی کو بھیجنا چاہئے۔ آپ جلدی میں کام کر رہے ہیں او صرف اس لئے کر رہے ہیں کہ آپ کو ان کا ڈر ہے، آپ کو ڈر یہ ہے کہ کہیں یہ آپ کے اوپر آروپ نہ لگا دیں کہ آپ نے دہشت گردی کو موقع دے دیا۔ آپ نے پوٹا ختم کر کے دہشت گردی کو بڑھاوا دے دیا۔ آپ ان کے ڈر سے اس قانون کو جلدی جلدی لا رہے ہیں۔ ان سے مت ڈریئے، آپ سچائی پر چلئے۔ آپ مسلمانوں کو خوش کرنے کے لئے کچھ مت کیجئے۔ آپ سنگھ پریوار کی چاپلوسی کے لئے کچھ مت کیجئے۔ ان کے appeasement کے لئے کچھ مت کیجئے۔ یہ جو جلدی جلدی آپ امینڈمینٹ لا رہے ہیں اس سے سنگھ پریوار کا appeasement ہوتا ہے اور میں آپ

سے یہ کہنا چاہتا ہوں کہ اس سے بہت سارے نقصان ہونے والے ہیں اس لئے اس کو لیگل سسٹم کا حصہ آپ مت بنائیے۔

تیسری بات میں یہ کہنا چاہتا ہوں کہ جو ریویو کمیٹی کا ایک پروسیجھ تھا، وہ اس امینڈمینٹ میں موجود نہیں ہوگا اور جس طرح سے ہمارا لیگل سسٹم چلتا ہے مجھے تو بڑا دکھ ہوا، جب ہمارے ستا پکش کے لوگ، جب ہمارے ہوم منسٹر صاحب نے بار بار وپکش کو سمجھایا کہ ہم نے کوئی کمی نہیں کی ہے، ہم نے تو جو پوٹا میں تھا وہی یہاں پر رکھا ہے۔ جب انہوں نے یہ باتیں کہیں تو حیرانی ہوئی کہ آپ انہیں یہ سمجھا رہے ہیں کہ ایوڈینس ایکٹ میں بھی ہم نے کوئی بہت زیادہ گڑبڑ نہیں کی ہے۔ جیسا آپ چاہتے ہیں سب کچھ ویسا ہی ہے۔ یہ تو بڑی خطرناک بات ہے کیونکہ آپ نے اسمیں ریویو کمیٹی بھی نہیں دی ہے۔ آپ نے ریویو کا بھی پروسیجر نہیں دیا ہے۔ جس طرح سے ایوڈینس لیا جاتا ہے، جس طرح سے لوگوں سے پولس والے مارکر پیٹ کر ایوڈینس لیتے ہیں۔ * ..... دوسری طرف یہ چاہتے ہیں کہ پولس کسی کو بھی مارکر پیٹ کر اقبال جرم کرالیتی ہے اس کو ایوڈینس کے طور پر پیش کیا جائے۔

SHRI N. JOTHI: Sir, the matter is sub judice. It should not be raised here... *(Interruptions)..*

MR. DEPUTY CHAIRMAN: That is expunged. Sub judice matter is removed... *{Intenvptions)*

SHRI SHAHID SIDDIQUI: I am not talking about that case.

*Expunged as ordered by the Chair

श्री शिवराज वी. पाटिल :महोदय, मैंने यह नही कहा कि पुलिस के सामने जो जवाब लिया जाएगा, वह जवाब कोर्ट में दाखिल किया जाएगा और उसके आधार पर शिक्षा दी जाएगी-ऐसा मैंने नहीं कहा। यह जो unlawful Activities prevention Act में हम अमेंडमेंट करने जा रहे है, उसमें ऐसा कोई अमेंडमेंट नहीं है.....उन्होने इतना ही सवाल उठाया था कि इलेक्ट्रानिक इक्विपमेंट के आधार पर आपने अगर एविडेंस कलेक्ट किया तो उसके ऊपर कोर्ट अपना फैसला दे सकता है। कंप्यूटर पर अगर कोई मालूमात आए या टेलीफोन पर कोई एविडेंस लिया गया तो उस एविडेंस का उपयोग किया जा रहा है और एविडेंस एक्ट में हमारे थोड़े से प्रोविजन्स है, कोई ज्यादा नहीं है, मगर कंप्यूटर पर कोई मालूमात आए तो उसका भी हम इस्तेमाल कर सकते है, यही मैं बता रहा हूं, इससे ज्यादा नहीं।

श्री जनेश्वर मिश्र (उत्तर प्रदेश) **:** लेकिन इसको स्टैडिंग कमेटी को क्यों नहीं रेफर कर देते?

श्री शिवराज वी. पाटिल : उसकी चर्चा पहले हो गई है।

श्री उपसभापति : उसकी रूलिंग दे दी गई है।

† **श्री शाहिद सिद्दिकी :** मैं होम मिनिस्टर साहब की बात से पूरी तरह संतुष्ट नहीं हूं और मैं समझता हूं कि मिसयूज की बहुत गुंजाइश है और उसके डिटेल्स में अगर हम जाएंगे तो मेरे ख्याल में उसके लिए समय नहीं होगा। इसलिए मैं यह कहना चाहता हूं, मैं आपसे फिर यह विनती करता हूं और इस हाऊस से अपील करता हूं कि इस मामले को, जो कि बड़ा सेंसिटिव मामला है, इसको आप स्टैंडिंग कमेटी के सामने दे दें। इसको आज इस रूप में पास करना, जो हमारी लोकतांत्रिक शक्तियां है, जो हमारा लोकतांत्रिक आंदोलन है,हमारे संविधान की जो आत्मा है, यह उसके खिलाफ होगा और खास तौर पर अल्पसंख्यकों, पिछड़ों, गरीबों, मजदूरों और आदिवासियों के हितों के खिलाफ होगा। इसलिए हम इस अमेंडमेंट बिल का पूरी तरह से विरोध करते है और हम समझते है कि यह ठीक नहीं होगा। बहुत-बहुत धन्यवाद।

میں ہوم منسٹر صاحب کی بات سے پوری طرح مطمئن نہیں ہوں اور میں سمجھتا ہوں کہ مس یوز کی بہت گنجائش ہے اور اس کی تفصیل میں اگر ہم جائیں گے تو میرے خیال میں اس کے لئے وقت نہیں ہوگا۔ اس لئے میں یہ کہنا چاہتا ہوں، میں آپ سے پھر یہ ونتی کرتا ہوں اور اس ہاؤس سے اپیل کرتا ہوں کہ اس معاملے کو جو بہت حساس معاملہ ہے اس کو آپ اسٹینڈنگ کمیٹی کے سامنے دے دیں۔ اس کو آج اس روپ میں پاس کرنا

† Transliteration of Urdu Speech.

جو ہماری لوک تانترک طاقتیں ہیں جو ہمارا لوک تانترک آندولن ہے، ہمارے سنودھان کی جو آتما ہے، یہ اس کے خلاف ہوگا اور خاص طور پر اقلیتوں، پچھڑوں، غریبوں، مزدوروں اور آدی واسیوں کے مفاد کے خلاف ہوگا۔ اس لئے ہم اس امینڈمینٹ بل کا پوری طرح سے ورودھ کرتے ہیں او ہم سمجھتے ہیں کہ یہ ٹھیک نہیں ہوگا۔ بہت بہت دھنیواد۔

"ختم

شد"

SHRI FALI S. NARIMAN: Sir, I thought that I would speak when the Opposition are there because it is not much fun speaking to the converted. Therefore, I would have preferred it but, unfortunately, because of certain circumstances, it is not possible.

My learned, distinguished friend, and, colleague Mr. Jaitley spoke at the end about when history comes to be written, and, he warned the Home Minister that when history comes to be written, it will be very much against the proponents of this Bill. Sir, when the history of this period comes to be written about anything at all, we will all be dead and I don't think that this attention about history comes to be written has anything except a euphoric effect. I recall General de Gaulle saying once that we cannot confuse the breezes of fashion with the winds of history. We don't know what the winds of history may say, but I will deal with the breezes of fashion, not with any political slant but strictly as a nominated Member, and, please don't forgtet a Member nominated by the party of which Mr. Jaitley was the Minister.

Sir, there is always much politics about POTA, and, there always has been much politics about POTA. I am not going to speak about the politics of POTA Two principal parties have been polarised, on POTA which became a political issue ever since many of us including myself voted against it in the year 2002, both in this House, and, in the joint session of the two Houses. Sir, if POTA had been totally repealed, I would have been the first to oppose it, both because an anti-terrorist law is required, and, it is

mandated under the UN Security Resolution But, this Bill, almost word for word, draws upon the provisions of POTA, and, removes the harshness of the procedural provisions, not the substantive provisions which I hope to demonstrate. Does it remove its teeth? The answer is 'no'. I believe it does not, and, that is why, I support it. In fact, Sir, if there was such a thing as a copyright in a statute, this would have been a Bill copyrighted by the NDA, and the present Government would have been the guilty of a breach of copyright for copying the provision of POTA. Sir, there is an idea which is prevalent amongst many people, and, I regret to say, wrongly prevalent, both in this House as well as outside. That only a harsh law contain terrorism. Sir, if you look at Section 3 of the old Act and Clause 15 of the Bill, defining terrorist act and Persuading Punishment. You will find that the provisions are identical. In fact, there is one thing more. The punishment–that is I am talking now of the substantive isw-for the terrorist act is identical; it is the same. There is no difference in the punishment. Therefore, to say that the present Bill is not a harsh substantive law, would be erroneous. Yes, procedurally, there are points which I wish to mention. You can introduce the harshest law on terrorism, but you will never effectively counter it unless there is a detailed method of investigation and a proper marshalling of evidence in a court of law, because a court of law requires not suspicion, but evidence. Therefore, the key detection for cases of terrorism for the prosecuting agency is to marshal the evidence, such evidence as they gather. And, in fact, I have always believed, and if the Home Minister does not mind my saying so, that there are better safeguards in our preventive detention Law than in any other law for apprehending the terrorist. In fact, the ancient, almost now ancient, National Security Act is still in force, and the reason why a preventive detention law is more appropriate for a terrorist that a trial law is simply because, in respect of a terrorist activity, howsoever widely-defined, there is an inherent difficulty in its being established against a person accused in a court of law. Even, under the provisions of POTA, the previous Governments have found it extraordinarily difficult and the State Governments have found it extraordinary difficult to convict terrorists, to arrest them, to detain them, to Jail them. Then, you mix up the good with the bad. A large number of people were taken in, some people were detained for very long periods and ultimately they were found to be innocent of the offence, or, not guility, at least, of the offence. I would suggest to the hon. Home Minister, in consultation with the Law Minister, also to take into account and try to

revive this so-called 'dead' National Security Act and invoke some of its provisions for the detention of terrorists for which purpose, if an appropriate Bill is necessary, it may come in the next session.

If you look elsewhere, Sir, you will find there was a stormy debate in the British Parliament on their Terrorism and Crime Act which was enacted in February, 2002, and it provides not for prosecution or trial like POTO or POTA, but for indefinite detention for a period, without charge, of non-British national, reasonably suspected by the Home Secretary to be involved in terrorist acts. It is now proposed to extend it even to the British nationals as well. And, people have forgotten what happened two years ago. You will recall that President Musharraf tried to ridicule us before the internatipnal fora, when confronted with the abduction and murder of the Wall Street journal reporter, Daniel Pearl, the American correspondent. The man who is supposed to have murdered him was Omar Sheikh. He was the same Omar Sheikh who was detained in Jammu and Kashmir for nearly 5 years till he was released in exchange for passengers held as hostages in Kandahar on IC-814. Why? Simply because if he was tried, the evidence produced in court would not have justified the conviction. There was only a grave suspicion, the gravest possible suspicion of his involvement in terrorist act, but no proof that would stand up in a court of law. You will recall that Pervez Musharraf ridiculed us and said why did not the Indian Government prosecute and bring Omar Sheikh to trial for 5 long years. The General knew the answer, but he would not say it and, the answer is that the terrorist activity is in the realm of grave suspicion, seldom in the range of proof. The even-handedness of State Governments in administering POTA could not be ensured because of the harsh procedural.provisions. And, despite the setting up of a Review Committee, you will all recall, how the then Home Minister came here one year after POTA and agreed with the House that it was being misused by various States. In fact, he himself propounded an amendment to the review provision, which provided for a High Court judge to go into individal cases notwithstanding a court going into it. It is no longer there in the law, because it is not necessary now. But it is important to know that the Government of the day, at that point of time, itself felt the need for some machinery to alleviate the rigors of this very, very harsh procedural law.

Recently, some Members and people outside have asked me as to how this amending Bill is different. Are we 'better off? Or are we 'worse off? And

my submission, after reading it and comparing the provisions, is that we are 'better off. By 'we' I mean 'the innocent citizens of India'. If terrorists are not 'better off, we are not concerned. Of course, they do not have to be better off'. Are they 'better off? The former Minister said that they were "better off", they would be smiling; and they would be laughing and things of that sort The former Minister said that they would be laughing and they would be rejoicing and so on. I do not believe that. Why? Because the very same provisions, which they enacted in POTA, have been reproduced in the present Bill. All the substantive provisions, except the procedural provisions to which I will come in a moment, Sir, if you do not mind, are there.

First, in POTA, 2002, the Criminal Procedure Code was amended to provide for the extended period of fetention without trial. The police could do nothing for the six months, whereas the maximum period under Criminal Procedure Code is 90 days, really speaking 24 hours, or one month, or at the most three months under various magistrates' orders. Now, this is absent and done away with by the current Bill. That is number one.

Second, in criminal law, the ordinary principle for all undertrials is, as my friend rightly said, "bail not jail", as Justice Krishna Iyer used to put it. And the principle was really constricted by the provisions, of POTA and if you look at the sub-sections 6, 7, and 8 of Section 49 of POTA, you will know. Why these provisions are not in the new Bill. They were the most obnoxious provisions of POTA, and capable, of being used and which were used, misused and abused by many, many agencies of various State Governments. No person accused of an offence under POTA was to be released on bail, unless the court gave the public prosecutor an opportunity of being heard, and until the court was satisfied that there were groudns for believing that the accused was not guilty of committing the offence. Just imagine, anybody would be picked up, and the accussed would have to prove that he was innocent in order to get bail, which is an impossible situation! He could never get it, and therefore, he would be incarcerated for a minimum period of 180 days. And if the police could not make a charge, he would then be released, and there was no appreciated bail for one full year after detention.

Many members have said that there should be very, very stringent provisions for bail. But, Sir, I regret to say, with these methods of interceptions and communications, it is easy to frame any body. The other

day, Mr. Ahluwalia said in this very House about how his cellphone was misused by somebody, and the CBI came and investigated. He wanted to find out, how calls were coming from the Middle-East. He did not know, and he would never know. The calls were coming from the Middle-East, simply because this particular instrument was receiving calls on a transferred number, which is possible in these days of technological innovations. This is a very, very disastrous thing. Anybody couild be framed, and regarded as a terrorists only because he owned a certain cellphone which recorded calls from dubioius characters in the Middle-East.

Third, in POTA, 2002, trail was by Special Court. I do not like special courts. It is anathema to me and, I believe, that special courts are not really the courts of the land. The public have 'Confidence only in the established courts of the land.

Therefore, I would respectfully submit that this is a healthy provision. They should go to the ordinary criminal courts. But the only point, thereafter, would have to be that the trial should take place. And there is no difficulty in it. It the real terrorist is an undertrial, with sanction of the magistrate, for over six months, or for one year, or for two years, even if he gets bail or does not get bail on proper principles, that will be for the court to decide. Next, the provision with regard to confession under Section 32 in POTA was a departure as the Law Minister interjected and said from the Evidence Act of 1872. Why? Because in 1872, they said we cannot have police officers recording confessions in India or in any part of this contenent and we have had this whole regime of tortures of complelling people to confess. Sir, you don't require a person to be tortured in order to extract a confession; you only have to show him the instruments of torture. That's good enough for him to confess. Anybody would confess to the murder of his own mother or father if ultimately you showed him instruments of torture unless he confessed. Therefore, the healthy provision, now namely, that volutnary confessions would remain with magistrates, it's always possible to have a confession before a magistrate. Then, sixthly, the Review Committee, Yes, Has been abolished. You spoke about it. And it has been, please remember that the Review Committee was expanded by addition of provisions of sections 4,5,6, 7 and 8 by the then Home Minister himself because this entire House believed and we almost compelled him to say that you must provide some machinery for people who are innocent and who are unnecessarily detained and he very graciously and correctly, did so and

provided for it. But please see what used to happen, Sir. Even though the Review Committee presided over by a retired High Court Judge would say that there is no charge against this person at all, the State Goverment would either refuse to withdraw the prosecution or the public prosecutor would refuse. That has been the experience. I don't wish to name the States. There is no need to name people. It's enough to say that this was an iniquitous provision and, therefore, it is well that it is out of the statute books.

MR. DEPUTY CHAIRMAN: Mr. Narimanji, we will adjourn the House till 5.15 p.m. and then you can continue after 5.15.

SHRI FALIS. NARIMAN: I am sorry, Sir. Yes, certainly. I am very much obliged, Sir.

MR. DEPUTY CHAIRMAN: The House is adjourned till 5.15 p.m.

The House then adjourned at fifty-two minutes past four of the clock.

The House re-assembled at fifteen minutes past five of the clock,

MR. CHAIRMAN in the Chair.

श्री सभापति : श्री आर. के. आनन्द, आप कुछ बोलना चाहते है।

SHRI R.K. ANAND: Sir, I am sorry. I regret as to what I have said and hurt the feelings of the Leader of the Opposition. I apologise for the same.

श्री सभापति : मैं ऐसा समझता हूं कि जो कुछ हुआ, अच्छा नहीं हुआ और मुझे इस बात की खुशी है कि माननीय सदस्य ने उस पर खेद प्रकट किया है। ऐसी स्थिति में इस प्रसंग में इस हाउस में जो सारी चर्चा हुई है उस को मैं एक्सपंज करता हूं।

डा. मुरली मनोहर जोशी : उन्होने केवल खेद ही प्रकट नहीं किया, उन्होने एपॉलोजाइज किया है।

श्रीमती सुषमा स्वराज :क्षमा-याचना की है।

श्री सभापति :उन्होने क्षमा-याचना की है, खेद प्रकट किया है यह प्रसंग बहुत दुर्भाग्यपूण था और इस प्रसंग के संबंध में जो भी चर्चा हुई है, उसको मैं एक्सपंज करता हूं।

श्री शिवराज वी. पाटिल :श्रीमन्, अब यह सब कुछ अच्छा हुआ है तो हम समझते है कि अगर लीडर ऑफ द अपोजीशन यहां आ जाएं तो अधिक गरिमापूर्ण रहेगा।

.संसदीय कार्य मंत्री तथा शहरी विकास मंत्री (श्री गुलाम नबी आजाद) : माननीया डिप्टी-लीडर अगर उन्हें ले आएं तो बहुत अच्छा रहेगा।

श्रीमती सुषमा स्वराज : मैं जाती हूं।

श्री सभापति : श्री फाली एस. नारीमन।

SHRI FALIS. NARIMAN: Sir, I am very happy to see my distinguished and hon. friends back, and I also regret that unfortunate incident. While speaking in their absence, I have said that there is no point in speaking to the converted, and therefore, it was always better to speak to people who have a different point of view. There is no point in a debate if you do that. I am very happy that, at least, my distinguished friend, Shri Arun Jaitely, for whom I have great affection, is also present in this House. He assured me that he had listened to every word that I had already said outside the House, not inside the House. So, Sir, it would be futile for me to repeat what I have said. When the House rose at about 4.45 PM, I was on the provision with regard to a Review Committee. Now that provision has only been retained, that is, with regard to whether an organization is a terrorist organisation or not. For that purpose, a Review Commtitee is there. But for review of individual cases, that has now been abolished, and think rightly so, because now, it is with the ordinary courts, with all the safeguards that are there for liberty etc. But one imporant thing which the Home Minister, I think, should also remember, and which the former Law Minister must also bear in mind, is that in the Prevention of Terrorism (Repeal) Bill, 2004, there is an express saving clause, and this is what it says. 'The repeal of POTA, the principal Act, shall not affect," and the important words are, "any legal proceedings that has already commenced, and in respect of that legal proceeding, a Review Committee is to be reconstituted under sub-clause 3 of section 2 of the Prevention of Terrorism (Repeal) Bill, 2004," as a result of which, as I told my distinguished friend from Kashmir, who asked me a moment ago whether it would be in order for any one against whom a proceeding has been taken, and against whom there is a proceeding which is pending, to immediately apply to the Review Commtitee for a review of his individual case, I said yes and if the Review Committee passes a direction that there is no case to be tried etc., then the section says: 'The cases shall be deemed to be withdrawn or the cases in which the investigations are pending, investigations shall be

closed forthwith," which is a great safeguard in my view for all pending cases so that the review clause which the former Home Minister had expressly included at the joint request of all members of this House, is now retained with regard to all pending cases under POTA. Having said this, Sir, may I also mention another fact? It is a point on which I would request the hon. Home Minister to pay attention. Mr. Jaitly, I submit, rightly; raised the contention that Chapter-V of POTA was the most potent provision in that Act. In fact, I had suggested long ago, even when the opposed POTA, that it should be incorporated in a separate Act. Now, we have the new section 46.1 would like to tell the hon. Minsiter that what Mr. Jaitley stated in connection with interception is right because that is the easiest evidence, the only possible evidence, that is, what you get on the cell phones, etc., that is obtainable about international terrorism. That sort of interception must be looked at with a closer scrutiny and the provisions of the Chapter-V of POTA should, in my respectful submission, be incorporated under the rules to be framed under the new law because it would come under the words "any other law".. I think the Law Minister will agree with that. It mentions about the Telegraph Act and various other Acts. Mr. Jaitley was right because these Acts don't have the width of Chapter-V of POTA. Therefore, the provisions of Chapter-V of POTA ought to find a place under this new amending law. I am sure, the hon. Home Minister in consultation with the Law Minister will come to a decision on it and adopt it in the form of rules to be framed under the new law. That would be permissible because the words used are "under any other law" and the rules under the Act are certainly "any other law". The other thing is that the rules under the Telegraph Act, Information Technology Act, etc., may not cover a wide range of things that are covered by Chapter-V of POTA I would request the hon. Minister, in consultation with the Law Minister, to go into that Act very carefully and to be good enough to incorporate it in the rules that are to be framed because that is the only method by which really terrorism can at all be curbed. It is extraordinarily difficult to try a terrorist. Everybody knows that. In fact, as I mentioned earlier, in Great Britain, the law is not "try him" but "to put him under preventive detention" becaus this is a region of suspicion, not of proof. It is very difficult to proof. Therefore, I would very earnestly request the hon. Home Minsiter to copy,a bit of Chapter-V, which is already there is POTA. Various other provisions have alrady been incorporated.

Another thing on which I would like to compliment the Government is that there is an extension of the Terrorist Act which must be noticed by all Members. The extension of the Terrorist Act is this. I think it is section 15. It says:

> "Whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, does any act by using bombs...."

Then it says:

> "...detains any person and threatens to kill or injure such person in order to compel the Government in India or the Government of a foreign country or any other person to do or abstain from doing any act, commits a terrorist act."

This, I think, is a very good thing because it only shows that this has an international reach with friendly foreign countries. We are helping one another in the war against terrorism and, therefore, whatever is done wrongfully in one particular coutnry is not excluded from the jurisdiction of Indian courts. I compliment the hon. Home Minister for introducing this new provision and the words "foreign country" are not to be found in the old provision. This is how laws do develop. I would respectfully ask the members of the Opposition as well to take some credit for this law because most of it was already enacted by them through POTA.

Sir, now there is one last thing. I would request the hon. Members to consider whether the relaxation of the residual provisions under this new law is a good thing or a bad thing because I went through it very carefully. On the whole, I believe, it is a good thing because there have been instances fo misusing the POTA by the State Governments and it is the State Governments that detain a person, not the Central Government. It has become rampant. We are adept at misusing law. When I say "we" I use it collectively. I dont't want to blame any particular State Government. We use this power for political purposes. A lot of Governments have been attempting to do it. This is what the Bill seeks to check and prevent. That is why I would vote in favour of the Bill becase it protects innocent persons who believe in liberty and does not deny them redress of approacing the ordinarly courts for bail. People have confidence in the established courts and not in special courts. Thank you.

SHRI N. JOTHI: Mr. Chairman, Sir, on behalf of the AIADMK Party, I stand here to say that we oppose this Repeal Bill, to the fullest strength at our command, as it is drafted. When POTA was introduced in the year 2002 by means of Ordinances, repeated Ordinances, a permanent statutory position was given to it for a period of three years. There are five salient features in the Statement of Objects and Reasons. They are (i) internal security is at danger— Terrorism is not only of internal concern, but of international concern also. What is stated in the Preamble is: (i) internal security is at danger; (ii) cross-border terrorism is increasing; (iii) it has obtained global dimensions; (iv) terrorists are hi-tech people; (v) sufficient safeguards are available in the Act itself to prevent misuse. These are are salient features stated in the original Act. I would like to know from the hon. Home Minister whether the internal security is not at danger today. Are we very safe now? Even the Parliament was attacked. Now more stringent measure have been taken inside the Parliament Complex itself. Is our country without any cross-border terrorism as on today? In which world are you living? What kind of thinking are you having? Instead of calling it the Prevention of Terrorism (Repeal) Bill, we should call it the Prevention of Terrorism Compulsion (Repeal) Bill. There are some compulsions within the Ruling coalition. Due to such compulsions only - it is left to the Congress Party; I don't think they are for it - they are now forced to bring this Repeal Bill. This is what I visualise, (interruptions). Let me make my comments in a democratic manner. They have been compelled to do so. The previous Government also -1 am not going to spare them - due to certain compulsions, committed mistakes of its own which I will trace out. Under Section 18 of POTA, 25 organisations had been identified and declared as terrorist organisations. I would like to know from the hon. Heme Minister: Now, have all those terrorist organisations reformed themselves? Have they become *Sadhus* today? Aren't they terrorist organsrations as on today? Have they become very humble? Have they become so law-abiding that they would shun bombs and terrorism? if a *Sadhu* commits a mistake, he is no longer a *Sadhu.* If a man commits a mistake, he is no longer a *Sadhu*; he is a dragon. It is sad and sickening. I mean real *Sadhu,* not duplicate *Sadhu.* If you look at the evolution of the Act right from the period of Ordinances -I am on a larger point; I am trying to put it to the best of my ability - the main Act was passed in the Joint Session of Parliament and then the BJP Government brought in so many amendments and the present

Government has placed it in a graveyard once for all. If you look at it, there is no other Act in the history of India which has been mutilated every week, every day and every hour. This particular Act had been multilated at every stage, and it lost its tenor and the purpose for which it was created. For that, both the Governments have to be blamed. I am blaming both the Governments, in the public itnerest, that they should not have attempted to do such things. The BJP Government attempted to please somebody. But they left them high and dry and went away. And, they are trying to sabotage this Government, and this Government will suffer one day due to that reason. The day is not for away. The first Amendment was brought in 2003 - Mr. Jaitley can correct me if I am wrong; he was the author of the Bill - in the form of an Ordinance dated 27-10-2003. I did share my feelings at that time also. And, they were also committetd to it. That is a different issue. Sir, it all started with constitution of a review committee. Originally, what they had in mind was that terrorism should be contained. When their own man, in the garb of being their brother, turned to be supporting terrorism openly, holding meeting after meeting for five months in various parts of a particular State, openly supported a banned organsiation, collecting public opinion for them, action was taken against that particular person. That particular person was very friendly to them. So they wanted to safeguard that particular person leaving aside the national interest and the purpose for which a Joint Session was convened. In order to safeguard a particular person, I have never seen an Act, right from the time of independence— I am a person born after independence—going in for amendments for such purposes. To safeguard a person, they invented a review committee. This Review Committee was originally intended for a particular purpose. They broadened the scope and sphere of the Review Committee. The powers were given to the Review Committee unmindful of article 50 of the Constitution of India. Now, what does article 50 say? It talks about 'Separation of Judiciary from Executive'. Whatever be the powers of Review Committee, the Review Committee presided by a retired High Court Judge and two civilian officers, retired again, could have never been entrusted with such powers, could have never even had a second-class judicial power. Knowing this fully well, the BJP has done that, empowering the Review Committee to go into the question of the on-going cases. There are many eminent lawyers in this House, and I see most of them sitting here, and they know it pretty well how wrong it is. So, empowerment

was given to the Review Committee to step into the court cases. The matter went up to the Supreme Court, and the Supreme Court said, "it has no power. The power of withdrawing cases vests only with the public prosecutor under Section 321 of the Criminal Procedure Code." The matter was settled with that. But that was not to their liking. So, another amendment was brought, again by means of an Ordinance, Now, the power of issuing an Ordinance is given to the President of India. But this is used sparingly; like somebody mentiond, it is a *'Brahma Asthram'. 'Brahma Asthram'* is required when you cannot destroy a demon by other weapons. Likewise when an amendment is very much required on any Bill, and Parliament is not in Session, then, an Ordinance is issued. But, here, every now and then, the Ordinances were issued under POTA. The latest one was issued to widen the horizon of the Review Committee saying that they could call for the records, could look into any matter and that their words were final. This was again not supported by my party. Are they not aware of it, Sir? They are aware of it. Mr. Jaitley is a good lawyer. He knows all basic elements of law. He knows them fully well. Still he did it. The hon. Home Minister, Shri Shivraj Patil, also knows it fully well. He has been well-advised by his officers; still he is pushing it through. Will these amendments stand in the court of law? They will not. Now and here itself, I say that they will not. The reason is Article 50. But still they are doing it. Why? They want to satisfy some people. If that is the real intention, why not tell them from close quarters? Why do you bring it in public? How does it matter who will lose his face? The BJP has lost their face and the Congress will lose its face before the public. I am cautioning them. That is all I am saying. Sir, if you could do any act contrary to the basic structure of the Constitution, it will not be supported by the court of law.

Now, what does your repealing Bill say? There is again a contradiction. I will ask the Minister; if he has got some respect for me, let him kindly look at page 2 of the Bill. What do they say in Sub Clause (3); again and again they have harped only on the Review Committee, as if the Review Committee can be armed with all the powers that can nullify the court proceedings. It is very unfortunate. They are not going to succeed as the BJP has not succeeded earlier. What did they say earlier? They had said that the Review Committee could call for the records and pass orders. That was not supported by the court Now, Sub Clause (4) has been inserted

saying, 'The Review Committee constituted under the Central Government under Sub Clause (1) of Secton 60 of the principal Act shall, while reviewing cases, have powers of a civil court under Civil Procedure Code in respect of the following matters, namely, (b) requisition of any public record, or, copy thereof, from any court or office". That means that this Review Committee, now presided over by Usha Mehra, the Retired Judge of High Court—of Delhi High Court, I think—can call for the record from the court, tie it and throw it on the shelf—that is what they think—so that some of them can be saved. This will be struck down. Who wants to put his face in shame? I don't want to be a party to it. That is why we are opposing it. When Parliament makes a law, it should be supported by the court. It should not be put into shame by the court. How can we empower an administrative wing of a body to interfere with the court powers? How many times will the High Courts and the Supreme Court go on saying, "Don't interfere in our powers"? How can you call for the records of the court? Are you a supporter of it? Can the Review Committee be termed as a superior body to call for the records of the court? This is unheard of, unheard of, in the history! There is no parallel legislation to this extent. Still it is being attempted. Why?

SHRI SHIVRAJ V. PATIL: I think you have not read the provisions of this Section carefully. What it says is, "The Review Committee, constituted by the Central Government, under Sub-Section (1) of Section 60 of the principal Act, will review cases, have powers of a civil court, under the Cod of Civil Procedure, 1908, in respect of the following matters: discovery and production of any document...". You don't object to it.

SHRI N. JOTHI: I don't object to it.

SHRI SHIVRAJ V. PATIL: "Requisitioning any public record, or, copy thereof, from any court". It is not the record; it is a copy of the file in the court.

SHRI N. JOTHI: I have read it correctly, Sir.

SHRI SHIVRAJ V. PATIL: Copy of the file in the court.

SHRI N. JOTHI: Please, Sir. You must read it in conjunction; you cannot read it apart. Any public record or, copy thereof, means either the original or the copy.

SHRI SHIVRAJ V. PATIL: No please.

SHRI N. JOTHI: Anyway, Sir.

SHRI SHIVRAJ V. PATIL: I am interrupting.

SHRI N. JOTHI: Please, Sir.

SHRI SHIVRAJ V PATIL: Let us be very careful. "Requisitioning any public record, or,"—it is separate—"copy thereof, from any court:.... If you want any document from any court, you are not asking for the original document; you are asking for the copy.

SHRI N. JOTHI: In that case, it should have been termed only to this extent; "calling for authenticated copy of the court record". Those should have been the words. *(Interruptions)* That should have been the words. If you are sticking to that, then, please withdraw the earlier portion. Sir, you are a good person, but the draftsmen are not good. *(Interruptions)* I know he is a lawyer. Sir, on a reading of this, anyone can easily say that it has got two portions; one is, calling for the original record itself; second one is the copy. The option is up to the Committee. The Committee can exercise either of the two. If the court sends only the copy, they may say, 'please send the original itself. Thereafter, what will they do? How can they call for the record? Sir, what propriety the Committee has got to call for the record of the court? Are the courts subordinate to it? Can a High Court call for the record of the Supreme Court? *(Intenuptions)* The Committee cannot be empowered by the Parliament, however high the Committee may be. Kindly understand it. Sir, the problem is, I am sorry to say this. I have got great respect for Mr. Venkatapathy and the other gentleman, both of them are your colleagues. I don't want to say anything against them. But, please don't be carried away by them because they have got an agenda in the matter.

SHRI SHIVRAJ V PATIL: We are not talking against each other. When we are trying to explain, we are not speaking against each other personally. But, let me tell you that even a Magistrate Court can ask for the record from this House, the Speaker's Hosue. That does not mean that this House is subordinate to the Magistrate Court.

SHRI N. JOTHI: The court can ask for, not a small committee. *(Interruptions)*

SHRI V. NARAYANASAMY: They are misusing the POTA in Tamil Nadu so much. Now, they are talking about the misuse of POTA in this House. *(Interruptions)*

SHRI N. JOTHI: Only Mr. Chairman can silence him, I can not make him silent. *(Interruptions)*

SHRI NILOTPAL BASU: There should be some respect for the time.

SHRI N. JOTHI: I am sorry, no restriction has been given to anybody. Why should it be given to me only? You cantrol your people, not me.

MR. CHAIRMAN: Mr. Jothi, the time allotted to you is over. Please conclude.

SHRI N. JOTHI: Sir, hardly I have started to speak. *(Interruptions)* I have got some time. All of them are supporting it. I should be given some time because I am the only person who is opposing it. So, I should be given some time. *(Intenuptions)*

SHRI NILOTPAL BASU: Mr. Jothi, you have not got proper understanding with the NDA.

SHRI N. JOTHI: Sir, I am not worried about the NDA or NPA in this. I am only worried about the general public here. Mr. Chairman, Sir, kindly give me some more time becasue I have worked on this to my level best. *(Intenuptions)* Mr. Narayanasam's interruptions are really very horrible.

Now, Sir, the situation in the North-Eastern States, Jammu and Kashmir and in 137 districts is really horrible. About ten days ago, a special meeting of the highest police officers was called by this very Home Ministry to combat the hardcore groups. While they are combating the hardcore groups, they are disowing the weapon which they have got in their own hand. How are they going to combat it? Are they going to combat them by soothing words? I don't understand it.

Sir, quite often in this House I have got a case to say; I have got a reasons to say; I have got a brief to say. If has been repeatedly said in this House that POTA has been misused and POTA has been abused; it has been misused against the political opponents. I am tired of hearing it The people who have talked of it have not made a case-to-case study. As far as the issue...

SHRI V. NARAYANASAMY: Prove it in the court.

SHRI N. JOTHI: As far as the issue in Tamil Nadu is concerned, even after the public prosecutor filed the application to withdraw the case, the trial court has said that the case is made out, please proceed with the trial. That has been stayed by the Supreme Court. That is what is Mr. Nariman has said, but he is not here. So, what I say is correct. What does this indicate? It indicates that the courts are supreme. You can't interfere with their work. You can make any number of amendments; the whole voice of Parliament can make a law on this; but the basic structure can't be changed at all. Kindly understand it.

Sir, coming to... *(Interruptions)*

SHRI PREM CHAND GUPTA (Bihar): Mr. Chairman, Sir, he is challenging the entire House. He is challenging the power of the august House. *(Interruptions)*

PROF. SAIF-UD-DIN SOZ (Jammu and Kashmir): This House is the lawgiver. *(Interruptbns)*

SHRI NILOTPAL BASU: Is the sovereignty of this House in making laws questionable? Is it subservient to the courts of law? I am speaking on the power of law making. *(Interruptions)*

SHRI N. JOTHI: I am answering all of your questions. *(Interruptions)*

PROF. SAIF-UD-DIN SOZ: What are you anwering?

SHRI NILOTPAL BASU: He should be true to the oath he has taken.

SHRI N. JOTHI: Sir, I am answering you. Please allow me. I am answering you. *(Interruptions)*

PROF. SAIF-UD-DIN SOZ: Excuse me, Sir, in fact, he says that this House can't amend the law. This is our authority. We are the law givers. You are challenging the authority of Parliament! You are not conversant with laws. You may be a lawyer-Member of this House. You may be a law graduate. But you are not conversant with laws.

SHRI PREM CHAND GUPTA: For his petty political game, he is trying to challenge the power of this House. *(Interruptions)*

SHRI N. JOTHI: I am going to answer. *(Interruptions)*

DR. K. MALAISAMY (Tamil Nadu): It is his chance to speak, let him speak. *(Interruptions)*

MR. CHAIRMAN: Mr. Jothi, you please conclude.

SHRI PREM CHAND GUPTA: This House is supreme. *(Interruptions)*

SHRI N. JOTHI: He is not allowing me to speak. *{Interruptions)*

MR. CHAIRMAN: Let him clear his position.

SHRI PREM CHAND GUPTA: Sir, he is challenging the sovereignty of the House.

MR. CHAIRMAN: Let him clear his position. *(Interruptions)*

SHRI N. JOTHI: My Lord, sorry; Mr. Chairman, Sir *...(Interruptions)*

AN HON. MEMBER: Sir, please expunge this "My Lord".

SHRI N. JOTHI: "My Lord" can be expunged.

MR. CHAIRMAN: Please conclude, Mr. Jothi.

SHRI N. JOTHI: Hon. Chairman, Sir, I will take only five minutes. *(Interruptions)* Mr. Gupta, I am answering you, please allow me to speak.

I am not undermining the authority of the House, at all. *(Interruptions)* The courts have repeatedly said. Whenever we have interpreted a particular law in a particular manner, and if we amend it in such a way to dilute the power which has already been given, that will be removed. That is what courts have said. On this Review Committee matter, courts have repeatedly said so many things.

SHRI V. NARAYANASAMY: Sir, his argumentation is fit in courts, not in this House. *(Interruptions)*

SHRI VAYALAR RAVI (Kerala): Sir, I am on a point of order under rule 240. *(Interruptions)*

SHRI N. JOTHI: Sir, I am only cautioning. Let us not be anxious... *(Interruptions)*

SHRI VAYALAR RAVI: Sir, I am on a point of order under rule 240. *(Interruptions)*

SHRI N. JOTHI: Sir, myself being a Member, will I undermine the power of this Hosue? I will not. I am not doing that. *(Interruptions)* You have misunderstood me. *(Interruptions)*

SHRI NILOTPAL BASU: Sir, a point of order gets precedence.

SHRI VAYALAR RAVI: Sir, 240. Irrelevance or repetition: "The Chairman, after having called the attention of the Council to the conduct of a member who persists in irrelevance or in tedious repetition either of his own arguments or of the arguments used by. other members in debate, may direct him to discontinue his speech."

MR. CHAIRMAN: I agree with you, please take your seat. *(Interruptions)* Please take your seat. *(Interruptions)*

SHRI N. JOTHI: Sir, this is irrelevant, really.

MR. CHAIRMAN: Mr. Jothi, only in two minutes you have to finish your speech.

SHRI N. JOTHI: Sir, uninterrupted two minutes, please. *(Intenuptions)* Sir, they have said about...

SHRI R. SHUNMUGASUNDARAM: Sir, I am on a point of order. It is not only irrelevant; he has quoted wrongly before this forum. Sir, the High Court went into Sub-section (4) to (7). They were challenged by the State Government. The High Court upheld the constitutionality and said that the Review Committee has powers.

SHRI N. JOTHI: You write that and put it in your pocket.

MR. CHAIRMAN: Please take you seat. If you have some objection, move a Breach of Privilege. *(Interruptions)* Please take your seat. *(Interruptions)*

SHRI N. JOTHI: I have not opened my mouth to be sealed.

MR. CHAIRMAN: If you take two minutes to open your mouth then what will happen to this House?

SHRI N. JOTHI: Sir, they talked about the misuse of POTA. Sir, any practical person in life could have understood. Section 307 of the Indian Penal Code, 'Attempt to murder[1] has been much abused and misused. Have you taken that section away? Just like that, Section 506 (ii) of the Indian Penal Code has been put off because after seven years there is no bail. Have you taken that section away? Have you taken away the Dowry Prohibition Act which is one of the most abused and misused Act? Like that, in a man's life, there will always be metabolism and there will be catabolism. There will always be one good side and always some bad side.

MR. CHAIRMAN: Please take your seat. *(Interruptions)* Your time is over now. *(Interrupttons)*

SHRI MANOJ BHATTACHARYA(West Bengal): Both catabolism and metabolism cannot go together. He is misleading the entire House. He does not know. This is part of physiology. *(Interruptions)*

MR. CHAIRMAN: Please take you seat. *(Interruptions)* Your time is over.

SHRI N. JOTHI: Sir, I will formally conclude. Sir,...

MR. CHAIRMAN: Shrimati N. P. Durga. *(Interruptions)* Your time is over. Please take your seat.

SHRI E.M. SUDARSANA NATCHIAPPAN (Tamiinadu): He has not made out his case at all. He has been interrupted unnecessarily. He must be given time.

SHRI N. JOTHI: If at all any misuse is there; they are misusing their power. *(Interruptions)*

MR. CHAIRMAN: Please take your seat. *(Interruptions)*

SHRI N. JOTHI: Sir, I am opposing this Bill. \ am fully opposing this Bill and this is very, very untimely and let them have a rethinking on this.

SHRIMATI N.R DURGA(Andhra Pradesh): Sir, I rise to oppose the present move of the Government to repeal POTA and bring amendment to the Unlawful Activities Act lock, stock and barrel. As we all know, the main reason for enacting the POTA was the UN Security Council's Resolution No. 1373, of September, 2001. Through this, the UN has urged all the countries of the world to have a comprehensive and stringent legal framework to deal with terrorist activities. The present Government, when it was in the Opposition, opposed POTA mainly on three grounds. The first one was, provisions regarding bail, secondly, provisions relating to confession and finally on the provisions pertaining to onus to prove innocence. I will come to these issues later. Sir, the UN's Resolution seeks to ensure and I quote, "Any person who funds or plots or prepares or perpetrates or supports the acts of terrorism is brought to justice and such terrorist acts are established as serious criminal offences under domestic laws." The provisions of POTA are exactly on these lines and had POTA not been enacted, the accused, who had attacked the world's largest democratic institution *i.e.,* the Indian Parliament, would not have been

convicted in just one year. Had POTA not been legalised, States, especially like Maharashtra, J&K, etc., would not have seized the property, bank accounts belonging to various terrorist organisations which have abetted or perpetrated terrorism. Are you going to get this kind of result in quick succession under the propsed amendment? I would say affirmatively, 'No'. Sir, under POTA, 32 terrorist organisations are banned. And, once you repeal it, the ban on them will automatically go away. Of course, you have included this in the proposed amendment to the Unlawful Activities Act. You have also included stringent provisions for terrorist activities even in the proposed Bill. Why? Why do you want to put old wine in a new bottle? When you are not opposing POTA in totality, you only amend those provisions—though they are not required in real terms—that in the opinion of the present Government could be misused. For tills, you need not repeal the entire Act, which is as a consequence of the UN's Resolution; but you can amend the necessary provisions. The Government is saying that POTA has been misused for the last two years. But no justifcable reasons have been given in the Statement of Objects and Reasons. I demand the hon. Minister to place before the House cases in which POTA has been misused and the cases in which POTA has been implemented effectively.

The other point is, according to the latest Report on Global Terrorism, 2003, of the United States, India is the worst victim of terror in 2003. And, as per the latest Narcotics Certification Report presented to the U.S. Congress, India is one of the major drug transit points and illicit drug producers of the country. This is just a tip of an iceberg as far as the status of India on terror is concerned. When you have such kind of Report against you, on what basis you are repealing POTA? There has to be some prudent justification in repealing POTA.

Sir, I need not enlighten this august House about the problem of naxalism in Andhra Pradesh. They are expanding their base from a few districts in the early 90s to more than half of Andhra Pradesh now. The daring bid on Shri Chandrababu Naidu is self-evident of the extent to which naxalism has gone up in Andhra Pradesh. Sir, there was also a report in a newspaper that all the Naxalites, after their merger, are now trying, through ISI to get somehelp from Al-Qaeda to carry on its activities effectively and efficiently in India. Now, the present naxalism in Inida is no less than any major terrorist organisation in the world, since it is getting assistance from Nepal, ISI, LTTE and now from Al-Qaeda. So, we have to pay more attention on this as well.

Sir, POTA might not be 100 per cent perfect. There might have been some loose tabs here and there and they are there in every legislation. Does it mean that we throw them? If that is the case, you throw IPC and a host of other Acts which are not flawless. I agree that there is a need to. strengthen the Review Panels. But, in the proposed Bill, the hon. Minister has restricted the Review Panels only to the Centre and not to the States. I wish to know the reasons behind the move and how this move will help you in achieving the quick trial and monitoring the progress of cases. I also agree that we have to look at the provisions relating to onus to prove innocence, etc. I would also say that the mature responsibility is to correct the flaws, not to score petty political points. The UPA Government should have acted in a prudent way because in its opinion a section of a particular community has been targeted. Ours is a secular country and it is the stand of our party all along the line that we should not distrub the secular credentials of India and that we should not allow any particular community having targeted or any particular community perpetrating communal violence. So, the sensible thing would be to include the phrase 'perpetrators of communal violence' in the existing Act itself than scraping it. This clearly shows the antagonism that the present Government has against the existing law, without any basic valid reasons. The Government says that the existing law is misused hence it is repealing it. if this is the argument, I question this Government. Why did you not have the same determination and commitment that you have now the repeal POTA at the time of repealing TADA? During Shri Narasimha Rao's entire regime, you could not pass the Criminal Law (Amendment) Bill.

Then, on the lines of POTA, your own Government in Maharashtra, has also passed MCOCA (Maharashtra Control of Organised Crime Act). How do you reconcile both these things? I want a candid reply from the hon. Minister. And, unfortunately, now, I understand, you are putting pressure on the Maharashtra Government to repeal MCOCA. I just failed to understand the commitment that this Government has in eliminating terrorism from the country.

The next point is this. In the proposed Bill, if any one is carrying arms unauthorisedly in a notified area or possessing bombs, RDX, dynamites, biological and chemical weapons, he is not committing an act of terrorism. I wish the hon. Minister to kindly clarify this.

[THE VICE-CHAIRMAN (SHRIMATI SARLA MAHESHWARI) IN THE CHAIR]

6.00 P.M. Then, for the first time, Madam, Section 22 of POTA defined the word terrorist'. You have in the proposed Bill gave some cosmetic touch and changed it to 'terrorist act', which gives the definition for the word 'terrorist.' So, you a.e not doing away with the POTA, as such. You are just opposing it for the sake of opposition. This is not a healthy sign for our democracy.

Finally, Madam, the hon. Minister was the Speaker when the Standing Committee system was introduced to scrutinize various Bills and the functioning of various departments of the Government of India. And, it has been the convention that Bills, brought before Parliament, are sent to the concerned Standing Committee for a thorough scrutiny. There is no harm if the proposed Bill is also referred to the Standing Committee to which, I am sure, the Minister, who is prudent enough, after listening to the arguements in the House will agree.

And, I only wish to say, in conclusion, please don't cut the head off if you have headache, especially if someone is waiting to receive that severed item and display it. Thank you.

SHRI M.P ABDUSSAMAD SAMADANI (Kerala): Thank you, Madam. It is a very historical legislation; it is a landmark legislation with regard to the protection of the democratic spirit and the very values of human rights. We are reminded of that black day when we met in the Central Hall. Unnecessarily a Joint Session was called. Ever since Independence, whenever a Joint Session was called it was in the national interest. It was for the first time that a Joint Session was called by then NDA Government just to pass this kind Of a draconian law, which is very notorious for its misuse. On several occasions, reports have appeared in the media and the Press that speak volumes of the misuse of this draconian law. There is always prejudice behind the legislation of these kinds of draconian laws. There is no difference of opinion on the point that terrorism has to be * curbed and dealt with harsh laws. Our friends and colleagues, who spoke from the other side, were going into the details of terrorism, the harms of terrorism, the dangers of terrorism, its seriousness. We have no difference of opinion on this point. I don't think that, in the present situation, there can be any kind of difference of opinion on this point either in this country or elsewhere in the world. Terrorism is terrorism. But, as my hon. colleague, Shri Shahid Siddiqui, asked: What is terrorism? There is a basic error even with regard to the definition of terrorism. Everybody is defining the

word 'terrorism' suiting to his own whims and fancies, his own mindset and mentality. This is very dangerous. We all agree that terrorism has to be curbed and there must be harsh provisions to deal with terrorism. But what about the innocent? What about the harassment that innocents have faced? What about the innocent citizens of the country who have been put behind the bars, misusing these kinds of laws. There are notorious examples of the TADA. There are notorious examples of the POTA. That is why, in this background, we congratulate the Government, we congratulate the hon. Home Minister for bringing this kind of a Bill. Madam, law keeping cannot be law breaking. Everybody is speaking in favour of law keeping. But what is, in fact, happening? It is a kind of law breaking and lawlessness. And, that is against the very spirit of the Constitution. Our Constitution is one of the best Constitutions of the world. We have our own provisions to deal with all kinds of anti-national activities and ideologies. We can utilize them. Harassing innocents, especially in this era, cannot be very welcome sign. That is why I would like to mention here that the move of the Government, the new legislation—with which our hon. Home Minister has come to this House—is a healing touch to the injured souls of this country. My hon. friend, Shri Arun Jaitley, was asking, "What was the grave urgency to repeal the POTA"? I would like to draw his attention, there was a grave urgency to protect the innocent, to undo the injustice. This was the grave urgency why the Government has come forward with this new legislation. Very many times, my hon. friends were referring to vote bank politics. I do not know what is the relevance of using this word in a discussion of this kind. If there is at all vote bank politics; the NDA Government used the vote bank politics to bring such a draconian law and to appease certain sections of the people, and to attack certain other sections of the society. Madam, I am not going into the clauses and the details of this law as the time is very limited and many other colleagues have yet to speak and many other colleagues, who have already spoken, have dealt with it in detail. But, I would like to mention this. I cannot understand why an honourable lawyer, Shri Arun Jaitleyji, was justifying confession before police. Confession before police in the 21st Century when we are speaking of all the progressive laws! Then he was arguing that confession must be before a senior police officer. What does it mean? What is the difference between a junior police officer and a senior police officer? A confession is a confession. It is a crime against law; it is a crime against human rights.

And, Madam, I want to mention here that political interference in the law enforcement was the salient feature of POTA. That is why, we opposed it on that occasion.

Then I come to the issue of giving bail. *...(interruptions)...* Madam, I am concluding. All the Governments, all the constitutions, are coming to need of protecting the spirit of human rights and humanness.

I think, in future; in the posterity, the language of humanity will be the language of human rights. And there will be a common language for humanity and mankind. And during such a period, it will be against the very civilization perspective for this kind of a law like POTA to exit in our country. It is high time we should bury it. We congratulate the hon. Minister and the Government for keeping their word to the country, to the society, to the people, and to the citizens of the country that POTA will be repealed. They have come with a separate law. I think the new legislation is for the protection of human identity and human dignity. I believe that human dignity is above every law; every consideration of law. Whenever there was a nexus between the legal process and the intoxication of power, this kind of misuse of law was always there in the annals of our history. Intoxication of power and legal process has to be separated. I will just conclude, Madam, by quoting this couplet from Allama Iqbal. He says सिकंदर व चंगेज के हाथों में जहां से, सौ बार हुई हजरत-ए-इंसान की कबाचक कबाचक IMany times, the shirt cf human being was torn into pieces in the hands of autocrats like Alexander and Changez Khan. " ख्तारीख का यक प्याम-ए-अजली है साहिबे नज्रा , नशा-ए-कुव्वत खतरनाक The intoxication of power is dangerous. Those who played with intoxication of power, they will have to go from power. That has been the experience of the last Government. I think, with this new legislation with which the UPA Government has come, the people of the country will be happy and those who argue and work for the spirit of human rights will be happy. Thank you, Madam. Congratulations to the Government.

प्रो. राम देव भंडारी : उपसभाध्यक्ष महोदया, मैं अपनी पार्टी राष्ट्रीय जनता दल की ओर से पोटा रिपील बिल, 2004 और द अनलाफुल एक्टिविटीज (प्रिवेंशन) अमेंडमेंट बिल, 2004 का समर्थन करने के लिए खड़ा हुआ हूं। मैं गृह मंत्री जी को और इस सरकार को बधाई देता हूं कि जिस कानून को इस देश में काला कानून के रूप मे जाना जाता रहा, ड्रैकोनियन लॉ के रूप में जाना जाता रहा, उस कानून को आप समाप्त कर रहे है। यूपीए गवर्नमेंट का जो कॉमन मिनिमम प्रोग्राम है। उसमें भी कहा गया है कि इस पोटा कानून को समाप्त किया जाएगा। महोदया, जब पोटा कानून

का बिल इस सदन मेंआया था, उस समय भी राष्ट्रीय जनता दल की ओर से विरोध हुआ था, फिर लोक सभा और राज्य सभा की संयुक्त बैठक हुई, उसमें भी राष्ट्रीय जनता दल की ओर से इसका पुरजोर विरोध किया गया था। पार्टी के राष्ट्रीय अध्यक्ष लालू जी ने कहा था कि भले ही NDA सरकार इस कानून को पास कर दे मगर बिहार में हम यह कानून लागू करने नही जा रहे है और जैसा लालू जी ने कहा, वैसा ही उन्होने किया, बिहार में पाटा कानून लागू नहीं हुआ। उस समय भी संदेह व्यक्त किया गया था कि पोटा कानून का बड़े पैमाने पर दुरूपयोग होगा। तत्कालीन गृह मंत्री जी ने कहा था कि, हम इसका ख्याल रखेंगे, हम इस कानून का दुरूपयोग नहीं होने देंगे। महोदया, पोटा कानून का मकसद देश में जो आतंकवादी गतिविधियां हो रही थीं, उनको नियंत्रित करना था। मगर पोटा कानून का दुरूपयोग हुआ, कई राज्यों में बड़े पैमाने पर उसका दुरूपयोग किया गया। कई माननीय सदस्यों ने इसकी चर्चा की है। गुजरात में अकलीयतों के खिलाफ .....(व्यवधान).... गुजरात में अकलीयतों के खिलाफ पोटा कानून लगाया गया।

श्री जयन्ती लाल बरोट (गुजरात) **:** आतंकवादियों का समर्थन ....(व्यवधान)... गुजराती। ...(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** बोलने दीजिए, उनको बोलने दीजिए। ...(व्यवधान)...

प्रो. राम देव भंडारी : और उन लोगों के खिलाफ .....(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** माननीय सदस्य, उनको बोलने दीजिए। ...(व्यवधान)... जब आपकी बारी आए तब आप बोल लीजिएगा, अभी उनको बोल लेने दीजिए।....(व्यवधान).... गुजरात का नाम लेना क्या गैर कानूनी है। गुजरात का नाम लेना गैर कानूनी नहीं है। ...(व्यवधान)... अनपार्लियामेंट्री या असंवैधानिक शब्द है, यह तो नहीं है। ..(व्यवधान).. अच्छा मैं आपसे निवेदन करूंगी कि माननीय सदस्य को बोल लेने दीजिए। देखिए, इस पर वोटिंग होनी है, आपको बहुत समय तक बैठे रहना पड़ेगा इसलिए माननीय सदस्य को व्यवधान न डालें, आप उनको बोल लेने दीजिए।...(व्यवधान)...

प्रो. राम देव भंडारी : एक खास समूह के लोगों के खिलाफ ....(व्यवधान)...एक खास समूह के लोगों के खिलाफ, अकलीयतों के खिलाफ ...(व्यवधान)... आपने पोटा कानून लगाया, आपने उसे जेल में बंद किया, यह क्या है? ...(व्यवधान)... और आपने उन लोगों के खिलाफ पोटा कानून नहीं लगाया ...(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** भंडारी जी, मैं आपसे निवेदन करूंगी कि आप चेअर की तरफ देख कर बोलिए। मैं आपसे भी निवेदन करूंगी कृपया बैठ जाइये। हमको बहुत देर तक यह डिबेट करवाना है। माननीय सदस्य को बोलने दीजिए। ...(व्यवधान)... उनको बोलने का

अधिकार है। जब आपकी बारी आएगी तब आप बोलिएगा। इस तरह सदन की कार्यवाही में रूकावट नहीं डालिए। ....(व्यवधान)....

प्रो. राम देव भंडारी :महोदया, सच्चाई कड़वी होती है जिन्हें वे लोग बर्दाश्त नहीं कर पर रहे है। ...(व्यवधान)...

श्रीमती सविता शारदा : गुजरात में क्या हुआ था? ...(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** वे कुछ गलत कह रहें हो तों आपको सफाई देने का मौका दिया जाएगा। कृपया उनको अपनी बात पूरी कर लेने दें। इस तरह सदन की कार्यवाही में बाधा न डालें। ...(व्यवधान)...

श्री ललितभाई मेहता (गुजरात) **:** वे सरासर गलत आरोप लगा रहे है। एक तरफ मामला कोर्ट में आया, कोर्ट ने कभी नहीं कहा कि आपने पोटा का दुरूपयोग किया है। ...(व्यवधान)..

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:**देखिए, अदालत ने क्या कहा, क्या नहीं, यहां हम उसको डिसकस नहीं कर रहे है। ...(व्यवधान)...

प्रो. अलका क्षत्रिय (गुजरात) **:** वहां के MLA के खिलाफ आपने पोटा क्यों नहीं लगाया। ...(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** कृपया सदन की कार्यवाही चलने दीजिए ...(व्यवधान)... देखिए, यह गंभीर मामला है, गंभीर विषय पर हम विचार कर रहे है। ...(व्यवधान)...

श्री ललितभाई मेहता **:** यह सब क्या है। मैं आग्रह करता हूं कि ....(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:**देखिए, माननीय सदस्य, मैं आपसे निवेदन करना चाहूंगी कि अगर उन्होने कुछ भी असंसदीय बात कही होगी तो निश्चित रूप से रिकॉर्ड देखा जाएगा और अगर गलत होगा तो उसको निकाल दिया जाएगा। लेकिन ऐसा उन्होने कुछ नहीं कहा है।

प्रो. राम देव भंडारी : मैंने सच्ची बात कही है जो इन्हें कड़वी लग गई है। .....(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** मैं निवेदन करूंगी कि आप विचार-विमर्श को जारी रखिए। भंडारी जी, आगे बढिए। ...(व्यवधान).. आप बैठिए, सदन में शातिं रखिए।

प्रो. राम देव भंडारी : महोदया, मैं कह रहा था कि जहां एक खास समूह के खिलाफ बड़े पैमाने पर पोटा लगाया गया, वहीं दूसरी ओर जिन्होने भारी नरसंहार कराया, जिन्होने हजारों लोगों की

हत्याएं करवाई तथा लोगों को जिन्दा जलवाया, ऐसे लोगों के खिलाफ पोटा नहीं लगा। इस प्रकार उस राज्य में पोटा का भारी दुरूपयोग हुआ जहां बी.जे.पी. शासित सरकार है। झारखंड में भी बी.जे.पी. शासित सरकार है। हमारे कई मित्रों ने कहा है कि दस वर्ष का लड़का, विकलांग, बूढा, महिलाएं इनके खिलाफ पोटा लगाया गया। .....(व्यवधान)...

श्रीमती सविता शारदा : मैडम, ये क्या कह रहे है। ....(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:**सविता जी, जब आपकी बारी आए तब आप जरूर बोलिएगा। आपकी पार्टी की तरफ से आपके लोगों ने वक्तव्य रखा है और जब उनकी पार्टी की तरफ से वे बोल रहे है तो उनमें बाधा डाल रही है। उनको बोलने दीजिए।

श्रीमती सविता शारदा :उनको गलत तो नहीं बोलना चाहिए।

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** वे गलत क्या बोल रहे है, उनको बोलने दीजिए। ...(व्यवधान)...

प्रो. राम देव भंडारी : महोदया इससे पहले कई वक्ताओं ने गुजरात की चर्चा की थी, तो तब ये लोग क्या सोए हुए थे। अब मैं उसी बात को बोल रहा हूं तो आप खड़े हो गए। ...(व्यवधान)..

श्रीमती सविता शारदा : ऐसे बयान देने से गुजरात में दंगे हो जाएंगे, तो यह क्या उनको कहने की बात है। हर बार यही होता है। कभी लालू जी बोल देते है कि गोधरा वाला कांड फिर से मत दोहराओं, कभी ये भी कह देते है। तो मतलब क्या है। आपस में हजारों हिंदु-मुसलमानों भाई .....(व्यवधान)...

प्रो. राम देव भंडारी : देश ही नहीं दुनिया ने देखा है, दुनिया ने आपको कंडम किया है। ....(व्यवधान)...

उपसभाध्यक्ष (श्रीमती सरला माहेश्वरी) **:** भंडारी जी, प्लीज आप बोलिए। देखिए, यह गंभीर विषय पर हम लोग चर्चा कर रहे है, कृपया गंभीरता बनाए रखिए। ...(व्यवधान)..

रूद्रनारायण पणि : लेकिन गलत बात हम लोग नहीं सुन सकेंगे। ...(व्यवधान)..

(श्री उपसभापति महोदय पीठासीन हुए)

प्रो. राम देव भंडारी : महोदय मैं कह रहा था कि कुछ राज्यों में पोटा का बहुत बड़ा दुरूपयोग किया गया। अभी मैंने गुजरात की चर्चा, झारखंड की चर्चा की। पोटा जिस उद्देश्य से बना था आतंकवादी गातिविधियों पर अंकुश रखने के लिए मगर पोटा में ऐसा कुछ नहीं हुआ। तत्कालीन

गृह मंत्री जी ने जो आश्वासन दिया था उस आश्वासन को पूरा नहीं कर सके। पोटा का राजनीतिक दुरूपयोग हुआ है और अल्पसंख्यकों के खिलाफ दुरूपयोग हुआ है। ऐसे कानून का एक मिनट भी रहना देश के हित में नहीं था। मैं दूसरी बात इस सदन में कहना चाहता हूं कि सत्ता पक्ष में भी और विरोध पक्ष में भी देश के बड़े-बड़े विधिवेता बैठे है। उन्होने विश्लेषण किया है, उन्होने कानून की धाराओं की व्याख्या की है। मैं महसूस करता हूं कि कानून के इम्प्लीमेंटेशन में कहीं न कहीं लैकूना होता है। किसी कानून का इम्प्लीमेंटेशन अच्छी तरह से हो, तो कानून सच्चे रूप में जनता के सामने आएगा। मैं माननीय गृह मंत्री जी से निवेदन करना चाहता हूं कि जो कानून आप बना रहे है, जिस कानून को आपने खत्म किया है, वह बहुत अच्छा काम किया है। इसके लिए आप धन्यवाद के पात्र है । मगर जो कानून आप ला रहे है – the unlawful activities(prevention) Amendment bill, 2004, इसका भी ध्यान रखना पड़ेगा कि इसका भी किसी स्तर पर दुरूपयोग नहीं हो। यहां की पुलिस, इस देश की पुलिस अभी भी पूरी तरह से इस लायक नहीं है कि हम उनके हाथ में पावर दे दें, उनके, द्वारा पावर का मिसयूज होता है। इसीलिए गृह मंत्री जी इस बात का ध्यान रखिये कि "पोटा" की तरह इस कानून का किसी तरह से दुरूपयोग न हो।

उपसभापति महोदय, मैं एक बार फिर से इस सरकार को, यूपीए सरकार को और गृह मंत्री जी को इस सदन में, इस बिल को लाने के लिए बधाई देता हूं। बहुत-बहुत धन्यवाद।

PROF. SAIF-UD-DIN SOZ: Mr. Deputy Chairman, Sir, I think the time has already run out and I have already been alerted to be brief, and I propose to be brief. I have to offer two couplets through Shri Arun Jaitley, who is not here, to the NDA-two couplets from *Faiz.* But before I do that, I must congratulate the Government, particularly, the hon. Home Minister, that they have come with this measure to repeal POTA. They got this mandate from the power of the people, from the people's court which is a very wider court, and they are fulfilling that mandate, and they have repealed this law. POTA has been totally misused. It is a draconian measure, and the BJP and their colleagues have been a party to this. So many atrocities were committee in every corner of India. But before talking of POTA, I heard two speeches. The other day, I heard Shri Arun Shourie, and today I heard Shri Arun Jaitley. I respect both gentlemen. Shri Jaitley is a very able lawyer, but he was defending a very weak law in the sense that under this law atrocities were committed against the most innocent people and there is ample proof of this. If Shri Jaitley is in the gallery or somewhere listening to me, I would put a question to the BJP or to the NDA, and I will be very polite; I can guarantee that: You only referred to Jammu and Kashmir and said that there is a tot of terrorism. Yes, But you don't have a word for praise who fought against that

terrorism. Shri Arun Jaitley gave us cold figures that so many people were kiiled, but the skipped and quoted selectively. More than 17,000 terrorists were killed. They were killed by Army, by para-military forces and rightly so they are fighting against terrorism, and the people of Jammu and Kashmir fought against terrorism and you have no word of praise. Who gave you this Assembly, who gave you this election, they had to face hazards to their lives and many people got killed, but they came to the booth; they defeated terrorists and their mentors across the border. But you have never responded to this. You only create a scare in the House. You are prophets of doom. You do know the change in Jammu and Kashmir. Why don't you mention the fact that nearly two lakh people went to Amamath Yatra? Why don't you say that every hotel in Srinagar and elsewhere was packed to the capacity? That was a boost to tourism, a response of the country and foreign tourists to the conditions that were created there. Why don't you mention this fact of social development? Nearly 80,000 Kashmiri Pundits and others visited Tulmula around Nallah Khir Bhawani, and there were around 20,000 Kashmiri Muslims to receive and greet them. You never talked of any social development, and when there was a chance for BJP to go there, participate and work with the people, you absented. It was only Shrimati Sonia Gandhi and her colleagues who went there during the Assembly Elections under very trying circumstances and gave you this Government and brought normalcy. You were watching from a distance. Now, you are sharing this information on cold figure with this House. It is misleading. And, therefore, I must tell you that during NDA time, because of POTA, people, who were learned, who knew *Faiz,* would often बने है अहल-ए-हवस do not have any translation-that means the people who are not responsible, who are greedy, whose mind is small बने है अहल-ए-हवस, मुद्दई भी, मुनसिफ भी I You wanted, through this draconian law, to be plaintiff and you wanted to be the judge also बने है अहल-ए-हवस, मुद्दई भी, मुनसिफ भी। किसे वकील करें किसे मुनसिफ। The people, who are still behind bars, have nobody to go to because you have closed all channels through which they could get justice because this was a draco.dan iaw. I am happy that this draconian law is going. And, we are not wanted to lower the guard. In this House, irrespective of party affiliations, there is not a single person who will advise the Government or advise political parties to lower the guard. We must fight terrorism to the best of our ability. That we shall do; that we are doing; that people of Jammu and Kashmir are doing. But, we must fight terrorism and we must yet be democrats and we

must be human being. It was a draconian measure and you could not convict; your conviction rate in the Court was just one per cent. And, you could not prove in 99 per cent cases; conviction was not there because it was draconian, it was a terrible situation for the Judges of our country. And, through the police, NDA created a scare in the Court rooms and the Judges were held helpless. I am not blaming all police personnel, but there were ones who wanted to toe the BJP line. They created a scare for Judges and some of the police officers became so irresponsible that they would say, "We want to do duties but the judiciary has archaic laws and hyper-technical laws to let them go." So, they had tried to blame the Judges and some of the Judges must have fallen victims to this kind of propaganda within the Court rooms and some police officers felt bold enough to say that fake encounters were necessary given the abysmally low record of judiciary. This is what appeared in our Press which is very free and it is a pillar of our strength. It is very unfortunate that the Judges can't come on a prime-time television, otherwise they would tell us how the police nabbed innocent persons under POTA who had to be acquitted later for want of evidence. *(Time-bell)* But, police had the patronage of the highest level under NDA Government and, in many cases, the police tried to frustrate the judiciary. I give an example. Without any fear of contradiction, I want to tell you that there were two Kashmiri boys. They were arrested when they were going to sleep and the police fabricated a case that they were going to throw a bomb at a bus stand in Lucknow in Shamli and they were arrested. They are still there. And, there was a Review Committee. I hope this review of cases will be now judiciously done and justice will be meted out to the people who are still languishing in jails and to these two students. The case was brought to Justice Saharia, who was appointed by the Judges. And, Saharia had to resign not because of this case-that is not by case-but because the police department did not forward the case of these two people to Justice Saharia, who was sitting here in Delhi. I want to request hon. Home Minister if there is a review of these cases, this must be fool-proof. We must do justice to the innocent, otherwise some measures may still be draconian because justice will not be meted out to most innocent people. If hon. Arun Shourie were here, I would remind him that it was shameful for that Government, and, therefore, they were removed from the scene. For seven months, the journalist who was the Bureau Chief of Kashmir Times was incarcerated and was in Tihar jail.

MR. DEPUTY CHAIRMAN: Please conclude.

PROF. SAIF-UD-DIN SOZ: Mr. Deputy Chairman, I will take two, three minutes only. I have skipped some points, and I am just saying something, which I consider to be very important. Now, this is on record. After seven months, I heard that Mr. Arun Jaitiey, the then Home Minister, and, the then Defence Minister had to have a meeting, and, they said since there is no record to show that he was involved in the criminal activity and there is no proof, that journalist had to be released after seven months of incarceration. This is on record, and, they should give an explanation today as to why that was done. Sir, this draconian POTA has gone. Hon. Mr. Nariman has said this, and, so many Members also said. Two measures were totally draconian, and, for that we have got rid of POTA. One is the confession before a police officer. This did not happen in British time that you have to make a confession before a police officer. Although we said in many cases that British were very cruel to us during our freedom movement. But this did not happen in British time. Through the confession before the police, police becomes part of the evidence. Sir, the second was the question of bail. The bail was not available, and, the bail ws not available also to these two students who are languishing in Lucknow jail. The bail was not difficult; it was impossible. Therefore, I cannot quote chapter and verse; I am not a student of Law. But, law is based on common sense, and, through common sense, I can say something about law. Hon. Justice Ramaswamy made his dissenting judgement in the court, and, this is why it is important for the Government to protect the innocent and yet fight terrorism and which was not done under POTA and under the NDA rule. Justice Ramaswamy said, and, I quote, "such a provision shocked the conscience and smelt of unfairness. Conferment of judicial power on the police will erode public confidence in the administration of justice."

He further said, "Killing of democracy by gun and bomb should not be permitted but, in doing so, the State has to be vigilant not to use methods which may be counter-productive. Care must be taken to distinguish between a terrorist and an innocent person."

MR. DEPUTY CHAIRMAN: Please conclude.

PROF. SAIF-UD-DIN-SOZ: And, that is what the NDA Government has failed to do. they did not distinguish between a terrorist and an innocent person. And, now about this measure, which the hon. Home Minister has

got, there is a comment in so many newspapers that POTA has been repackaged. I do no subscribe to thai theory; there is a lot of relief in the next measure. But, I want to request the hon. Home Minister that some care must be taken to protect the innocent. Practically, I am sure that innocent persons will not be hauled up in jails. And, therefore, I would suggest that the Home Minister may kindly hold an enquiry-because that will generate faith of the people-into the question of now many people suffered in jails for their innocence. Somebody should go into this. Those who have suffered are not with us. There is not only the impression but also ample proof-Justice Saharia and other will give the proof-that innocent people have suffered.

MR. DEPUTY CHAIRMAN: Please conclude.

PROF. SAIF-UD-DIN SOZ: Therefore, I would plead with the Home Minister, particularly, about these two students who are in Lucknow jail, and, are totally innocent. Now that I must take my seat, I offer another couplet to my NDA colleagues. There was a climate during the NDA regime, through these draconian laws, particularly through POTA that people, by reciting *Faiz,* what *Fail* talked when he was in jail.

जिंदाल जेल में था तो जेल में यह लिखा था कि जहां कहा जाता था कि इतना खौफ था, इतना फियर था, कहा जाता था कि

† निसार में मेरी गलियों के ऐ वतन कि जहां
चली है रस्म के कोई न सर उठाके चले"

جندال جیل میں تھا تو جیل میں یہ لکھا تھا یہاں کہا جاتا تھا کہ اتنا خوف اتنا فیئر تھا۔ کہا جاتا تھا کہ۔

نثار میں تیری گلیوں کے اے وطن کہ جہاں
چلی ہے رسم کہ کوئی نہ سر اٹھا کے چلے

-and, since you created that atomsphere, that was a path to fascism-have defeated you for never to come to *satta,* or never to come to have the reins of power in this country. Thank you.

MR. DEPUTY CHAIRMAN: Mr. Gandhi Azad, you have got six minitues.

आपके 6 मिनट बचे है।

श्री गांधी आजाद (उत्तर प्रदेश) **:**मैं बहुत शार्ट में बोलता हूं। मैं तीन मिनट में बोलता हूं।

† Transliteration of Urdu Speech.

उपसभापति महोदय : यहां आंतकवाद निवारण (निरसन) विधेयक, 2004 आतंकवाद निवारण अधिनियम,2002 को निरसन करने हेतु लाया गया है, मैं इसका समर्थन करने के लिए खड़ा हुआ हूं। महोदय, आतंकवाद निवारण अधिनियम, 2002 जब लाया गया तो देश के मीडिया के माध्यम से और सदन के माध्यम से बहुत हो-हल्ला मचाया गया कि इसके आते ही आतंकवाद समाप्त हो जाएगा। यह हल्ला भी मचाया गया कि बिना इसके तो हम आतंकवाद से उबर ही नहीं सकते। लेकिन इस आतंकवाद निवारण विधेयक को लाने के बाद ही लगार कि देश से आतंकवाद का सफाया हो जाएगा। इसके लिए संयुक्त सदन को भी आहूत करना पड़ा था लेकिन जब क्रियान्वयन का परिणाम देखा गया तो आसान रूप से नहीं निकला। महोदय, चाहे अधिनियम कितना ही अच्छा हो, उसका प्रतिकूल या अनुकूल प्रभाव, उसका पालन करने वाले की नीयत पर निर्भर करता है। अगर कानून अच्छे से अच्छा है, लेकिन उसका पालन करने वाले की नीयत खराब है तो अच्छे से अच्छा कानून भी गलत साबित हो जाएगा और कानून खराब भी है, लेकिन अगर पालन करने वाले की नीयत अच्छी है तो उसका भी अच्छे ढंग से क्रियान्वयन किया जा सकता है। हो सकता है कि देश के किसी प्रदेश में इस कानून का दुरूपयोग हुआ हो। लेकिन तत्कालीन समय में उत्तर प्रदेश की तत्कालीन मुख्यमंत्री सुश्री मायावती जी ने बहुत ही साहस और धैर्य का परिचय देकर, हिम्मत और हौसले के साथ, इस अधिनियम का परिपालन करने का प्रयास किया। जिसका परिणाम यह हुआ कि उस समय कानून और न्याय की बहाली के साथ-साथ पूरे उत्तर प्रदेश में अमन-चैन का वातावरण रहा। आतंकवाद पैदा करने वाले आपराधिक प्रवृत्ति के लोगों का समुचित स्थान या जो जेल का शिकंजा था या वे प्रदेश छोड़कर प्रदेश से बाहर चले गए थे। उस समय प्रदेश में शातिं-व्यवस्था, कानून की बहाली और न्याय का राज चल रहा था।

लेकिन आज उसी प्रदेश की कानून व्यवस्था की स्थिति क्या है, यह सर्वविदित है। आज वहां कानून व्यवस्था नाम की चीज नहीं रह गई है, लगता है कि आपराधिक तत्व ही शासन-प्रशासन को चला रहे हैं ...(व्यवधान)....

श्री शाहिद सिद्दिकी : ये इर्रिलेवेन्ट बात कर रहे है, इसका कोई ताल्लुक नहीं है ...(व्यवधान)... आप इस तरह से हाउस को मिसलीड कर रहे है ...(व्यवधान)....

شری شاہد صدیقی : یہ اررلوینٹ بات کر رہے ہیں، اس کا کوئی تعلق نہیں ہے .....مداخلت.....آپ اس طرح سے ہاؤس کو مس لیڈ کر رہے ہیں۔.....مداخلت.....

श्री गांधी आजाद : मैं मिसलीड नहीं कर रहा हूं, प्रणाम दे रहा हूं ...(व्यवधान).... मैं इसका प्रमाण देना चाहता हूं ...(व्यवधान)...

श्री शहिद सिद्दिकी : यहां लॉ एण्ड ऑडर डिसकसन नहीं हो रहा है ...(व्यवधान).. और बात हो रही है ...(व्यवधान)...

شری شاہد صدیقی: یہاں لاء اینڈ آرڈر ڈسکشن نہیں ہو رہا ہے .....مداخلت..... اور بات ہو رہی ہے .....مداخلت.....

श्री गांधी आजाद : मैं इसका प्रमाण देना चाहता हूं ...(व्यवधान)....

श्री उपसभापति : आपस में बात मत कीजिए ....(व्यवधान)...

श्री शाहिद सिद्दिकी : आज आप पोटा की बात कर रहे है ....(व्यवधान)...

شری شاہد صدیقی: آج آپ پوٹا کی بات کر رہے ہیں .....مداخلت.....

श्री उपसभापति : सिद्दिकी साहब बैठ जाइए ...(व्यवधान)...

श्री गांधी आजाद : इसका प्रमाण देना चाहता हूं ....(व्यवधान)... कि दो-दो चुनाव ...(व्यवधान)...

श्री वीर सिंह : अगर किसी ने पोटा का दुरूपयोग किया है तो मायावती जी ने किया है ...(व्यवधान)...

श्री गांधी आजाद : मैं इसका प्रमाण देना चाहता हूं ....(व्यवधान)...

श्री उपसभापति : यह हाउस है ...(व्यवधान).. आप दोनो झगड़ रहे है ....(व्यवधान).. आप बैठिए ...(व्यवधान)... आप उनको जवाब बाद में देना ...(व्यवधान)... बाकी सब जो कहेंगे, तब देना ...(व्यवधान)...

श्री गांधी आजाद : आज मैं आपके समक्ष, सदन के समक्ष कानून व्यवस्था के बारे में ...(व्यवधान)...

श्री उपसभापति : आप पोटा पर बात कीजिए ...(व्यवधान)...

श्री गांधी आजाद : उस प्रदेश में दो उपचुनाव का समय पर नहीं हो पाए, इससे बड़ा उदाहरण और क्या हो सकता है। दो चुनाव नहीं हो पाए, वे आज करने पड़ रहे है। यह तो कानून व्यवस्था का हाल है। आज अगर यह कहा जाए कि प्रत्यक्ष या परोक्ष रूप से आपराधिक तत्वों द्वारा वहां पर राज चलाया जा रहा है, तो कोई अतिशयोक्ति नहीं होगी। महोदय, मैं आपसे निवेदन करना चाहता हूं ...(व्यवधान)...

श्री राम नारायण साहू (उत्तर प्रदेश) **:** यह निकलना चाहिए।

† **श्री शहिद सिद्दिकी :** आरोप लगा रहे है....(व्यवधान)..

شری شاہد صدیقی: آروپ لگا رہے ہیں .....مداخلت.....

† Transliteration of Urdu Speech.

श्री वीर सिंह (उत्तर प्रदेश) **:** आप पर क्या आरोप ....(व्यवधान)..

डा. स्वामी साक्षीजी महाराज (उत्तर प्रदेश) **:** उत्तर प्रदेश के मुख्य मंत्री के लिए इस तरह से कहना ठीक नहीं है ...(व्यवधान)..

श्री उपसभापति : देखिए, आप पोटा पर बात कर रहे है, लॉ एण्ड ऑर्डर सिचुएशन पर बात नहीं कर रहे है ...(व्यवधान)...

श्री गांधी आजाद : मैं पोटा की बात कर रहा हूं, कानून व्यवस्था की नहीं ...(व्यवधान)...

† **श्री शहिद सिद्दिकी :**कहां बात कर रहे है ....(व्यवधान)...

شری شاہد صدیقی :کہاں بات کر رہے ہیں.....مداخلت.....

श्री उपसभापति :आप बैठिए ...(व्यवधान).. आप बैठिए ...(व्यवधान)..

† **श्री शाहिद सिद्दिकी :** पोटा पर बोलिए ....(व्यवधान)...

شری شاہد صدیقی : پوٹا پر بولئے .....مداخلت.....

MR. DEPUTY CHAIRMAN **:** Please, sit down, प्लीज टेक योर सीट ...(व्यवधान)...

श्री वीर सिंह :आपका समय आएगा तो बोल लीजिएगा ...(व्यवधान)...

श्री गांधी आजाद : सही बात कड़वी लगती है ...(व्यवधान)...

MR. DEPUTY CHAIRMAN **:** please, sit down ...(व्यवधान)... पोटा पर बोलिए ...(व्यवधान)...

श्री गांधी आजाद : पोटा पर ही बोल रहे है ...(व्यवधान)...

श्री उपसभापति : लॉ एण्ड ऑर्डर सिचुएशन डिसकस मत कीजिए ...(व्यवधान)... पोटा चल रहा है ...(व्यवधान)...please confine to this bill.

श्री गांधी आजाद : महोदय, मैं पुनः निवेदन करना चाहता हूं कि हो सकता है कि बहुत सारे प्रदेशों में इसका दुरूपयोग जरूर हुआ होगा और उसे ध्यान में रखकर जो विधेयक यहां लाया गया है, यह सरकार का एक अच्छा कदम है। ऐसी दशा में केन्द्र सरकार से अपेक्षा करता हूं कि जिन प्रदेशों मे कानून व्यवस्था के साथ खिलवाड़ किया जा रहा है, ऐसे प्रदेशों में केन्द्र सरकार को हस्तक्षेप करके कानून व्यवस्था का राज चलाने का प्रयास करना चाहिए। ऐसी प्रत्याशा से मैं इस

† Transliteration of Urdu Speech.

विधेयक का समर्थन करता हूं। मैं आतंकवाद निवारण अधिनियम, 2002 के निरसन के उपरांत, इसका स्थान भरने के लिए लो विधि-विरूद्ध क्रियाकलाप (निवारण) संशोधन विधेयक 2004, लाया गया है, इसमें भी आतंकवाद से लड़ने के लिए काफी कारगर उपाय बताए गए है तथा आंकवादियों को सजा देने की भी काफी व्यवस्था की गई है। मैं पुनः दोहराना चाहूंगा कि किसी अधिनियम की अच्छाई या बुराई, उसे लागू करने वालों की नीयत पर ही निर्भर करती है। अगर नीयत ठीक है, तो अधिनियम अच्छा है। इस विधेयक के समुचित प्रयोग की प्रत्याशा में मैं इस विधेयक का समर्थन करता हूं। धन्यवाद।

MR DEPUTY CHAIRMAN: Thank you.

DR. CHANDAN MITRA(Nominated): Thank you, Sir.

MR. DEPUTY CHAIRMAN: Hardly two minutes.

DR. CHANDAN MITRA: Sir. two minutes is very unfair, but I will try to finish.

MR. DEPUTY CHAIRMAN: The time has been exhausted by the nominated Members.

श्री जंयती लाल बरोट : किसी पार्टी में घुस जाओं, ज्यादा समय मिलेगा।

डा. चन्दन मित्र : ऐसा ही लग रहा है। Sir, thank you for the opportunity to participate in what has been a very very interesting and also a fairly heated debate. Sir, I think, to begin with, I would like to say that I find it very ironical that we are debating the repeal of POTA a few days before the anniversary of 13th December which will go down in the history as one of the worst outrages of outrageous terrorism in the whole world. This is and it is really I would say that this is something that will indeed, in my opinion, send out a very wrong message to the entire world. I am not speaking on points of law. Very, very eminent lawyers of the country have been present here and they have made their presentation. But the larger point I would like to make is that at a time when the whole world is tightening their antiterrorism laws, we, for reasons that are best known to the Government, have sought to repackage the existing law and dilute its provisions. I think it is also particularly ironical that it is coming at this time. Now, it is beign repeatedly said and, Sir, it is all very well known that terrorism cannot be categorised as normal crime, it has been very clear in various court judgments and I would like to read an expert from the Supreme Court Judgement in the Kartar Singh versus State of Punjab, 1994 verdict which says,

"Terrorism cannot be classified as mere disturbance of public order, but it is much more, throwing a challenge to the very existence and sovereignty of the country in its domestic polity. The fight against acts of terrorism is not a regular criminal justice endeavour. Terrorism is a new challenge for the law environment. To face terrorism, we need new approaches, techniques, weapons, expertise and, of course, new laws."

Now, given this wide consensus among the policy-makers and law enforcers in this country that prevails, I do believe that we are taking a step back in the fight against terrorism. It is being said in the course of this debate more than once that the normal practice, as the Supreme Court has very clearly ruled, should be bail and not jail. Now, this is a principle. Sir, that cannot be applied to a terrorist who is a hardened criminal and comes in with a lear purpose and a motive. We are talking about suicide squads, we are talking about fidayeen, we are talking about others who have infiltrated into this country with the purpose of Wreaking vengeance on our law and order system and, therefore, the same niceties cannot apply to such people who are out to demolish our democratic and pluralistic society. Sir, I would like to point out that it is being said that bail should normally be granted and that is one of the reasons why foe new Unlawful Activities (Prevention) Amendment Bill has been brought forward. But even under POTA, look at the number of absconding people that we have had. In the State of Andhra Pradesh, Sir, of the 270 persons who were involved, 225 people are still absconding. In Delhi, of the 66 people,' T2 are absconding. In Jharkhand, which is tackling the Naxalite insurgency in a very bad situation, out of 745 people who were booked under POTA, 514 are absconding. This is the position with regard to POTA where bail was not admissible for six months or one year. Now, in this scenario, to further dilute the provisions of the Act and allow a bail in almost the same way as if we are dealing with normal crimes, I think, will be a grave travesty of justice, and something that will cause an escalation of terrorist activities and encourage terrorism. My learned friend, Shri Fali S. Nariman, one of the most respected lawyers of the country, has talked about preventive detention being an alternative. I would only like to point out that preventive detention is probably worse than what is being suggested today, because, even the provision of review in preventive detention comes up much later than what was provided under POTA... *(Time-Bell)...* Sir, I will not take

much time. But I only want to say that, at a time, when worldwide, there is a need to strengthen the laws, India has been calling for a United Nations conference on combating global terrorism, our friends, such as Russia, are battling with this threat, an recently, after the Baslan incident, has made the institutional provisions very stringent to tackle terrorism, I think, a very wrong singal is being given, and, Sir, therefore, I have reasons to oppose the Bill that is proposed by the Government. Thank you.

SHRI SHANKAR ROY CHOWDHURY (West Bengal): Mr. Vice-Chairman, Sir, this debate has generated a lot of emotions, a lot of feelings and a lot of idealism. Actually, the case set out by the hon. Home Minister in the Statement of Objecs and Reasons has put the case in a nut shell. There are two issues here. The first issue is, the Central Government was concerned that the Prevention of Terrorism Act, 2002 was being grossly misused. Secondly, the Government is firm in its resolve not to compromise on the fight against terrorism. Now, this Bill that has been brought in, the Unlawful Activities (Prevention) Amendment Bill, 2004, must be judged against these two parameters. Can it be misused and how effective will it be? Can this law be misused? Yes, Sir. It can be misused. For that matter, any law in India can be misused, starting from traffic laws onwards. So, therefore, I think, a number of hon. Members have made this point that this law is also susceptible to misuse. We must trust our native genius to find a loophole in this law how to misuse it. How effective will it be? It will be as effective as it is made out to be, because basically, my respected and pre-eminent legal friend here, Shri Fali S. Nariman, has said that this is actually and essentially the POTA repackage, which is the way it should be, because, it has been provided by the introduction of this Bill, though, during the election campaign, the point of the UPA Government was that they want to use normal laws to fight POTA, just not to fight terrorism. That is not really feasible. To fight terrorism, and indeed, to fight organized , crimes, you need special laws, and the fact that the Unlawful Activities (Prevention) Amendment Bill, 2004 has been brought, proves the point that we need special laws or normal law, amended for special circumstances. Now, I will go through this point-by-point, and whatever comments I am making, I owe it to my friend, Shri Fali S. Nariman here. The first point is, section 49 is the modified application of certain provisions of the Code; extension of detention period up to 180 days, without trial, is not found in the new Bill. There is an alternative in the National Security

Act, and I hope, it is used, but used judiciously. The second point is about bail. POTA had section 49, with four sub-paragraphs on bail, which is not found in the new Bill. The principle of bail, not jail is an established principle. It is also an established problem because, one must understand that when one is discussing a Bill like POTA, one is talking of two different worjds, both of different circumstances and different values, the world of the Judiciary and the Legislature, and the world of the security forces. They are two different worlds. They are often in contradiction with each other. Now, the problem is bail. It has been a common experience of security forces, a common frustration of the security forces, that a terrorist caught in the act and produced before the judicial authorities within 24 hours, as required, is out on bail the next day. It is a fact of life that 80 per cent of terrorist crimes as also normal crimes are committed by people who are out on bail. So, I think, this is a problem which the Government will have to consider while considering the application for bail.

7.00 P.M.

The judiciary too is under threat. This is also a fact of life. The judiciary is under threat and we have found it in many cases. We have found it in Punjab; we have found it in the North-East; we have found it in Jammu and Kashmir. The hostiles, the terrorists and the militants place the judiciary under threat of their lives and, more damagingly, of their families. So, the judiciary's decisions, particularly, about granting bail, are guided by the very human factors of security. The judiciary is committed; it is under threat and this affects the granting of bail.

As regards sections 23 to 25, trial by Special Courts, Mr. Nariman said that, as far as possible, the trial should be by the normal-courts. But, I think, Special Courts, both for dealing with terrorists and organised crimes, are the only way out. As a matter of fact, in certain cases the local situation is so bad that it is worthwhile to bring special judges from outside that area to preside over the Special Courts. Those are the circumstances and we have to function within the norms of reality. If these terrorists crimes are progressing through the normal criminal courts, with the backlog of cases which exist in normal civil judicial system, the terrorist crimes will, I think, take their own time for coming up for trial. The Government will have to look into this when it considers the trial through the normal criminal courts.

Sir, confessions made to a police officer are inadmissible in trials. I know, though I am not a legal person, that confessions made to a police officer are not admissible in evidence. I think this is a basic flaw in our system which we must now, at least, address and rectify.

It is, perhaps, not correct for the Government of India to accept, after 50 years of independence, that its entire police force is undependable. This is a direct reflection on the reliability of the police force. I think as long as the present laws of evidence are there, of course, they are not admissible. But I think the Government of India, as also the State Governments, must take note of this so that, as a modern nation, State, we do have a dependable police force. *(Time-bell)...*

Sir, I come to the last point, since you rang the bell. I have two more points. I will come to the last point which is about the Review Committee. This, I think, is the weakest limb not only of the present Bill but also of POTA. The only way to ensure that the laws are not misused is to have strong Review Committees, not only at the Central level but also at the State level. As far as the cases of misuse are concerned, a vast majority of them have been by the State Governments. Therefore, it is imperative that the Review Committees are constituted at the State level. As regards the composition of the Review Committees, my own suggestion is that we should go back to the Dharma Vira Report of the National Police Commission, which, though for different reasons, recommended that there should be a State Review Committee of which the Chairman should be. the Home Minister of that State. It should include the Leader of the opposition of the State Assembly and other eminent persons from the State, which will look into the cases of persons detained under this Act. Thank you, Sir, for giving me this opportunity. With these words, I support this Bill.

श्रीमती जया बच्चन (उत्तर प्रदेश) **:**उपसभापति महोदय, पोटा का काला कानून खत्म किया जा रहा है, स्वागत है, बधाई है। बिना किसी सबूत के सिर्फ संदेह के आधार पर किसी को भी पोटा-पीडित बनाया जा सकता है। मुम्बई, जहां मोका लागू है और जहां दंगों के दौरान मैंने माइनॉरीटिज की आखों में लाचारी को देखा, समझा है एवं उन्हीं के खिलाफ ज्यादा-से-ज्यादा पोटा का दुरूपयोग हुआ है। मगर पोटा का नाम बदल कर लगभग ऐसा ही आतंकवाद निरोधी बिल लाया जा रहा है। यदि पोटा की तरह का ही दूसरा कानून सरकार को लाना है तो पोटा को हटाने की जरूरत ही क्या है? मैं पोटा या पोटा की तर्ज पर बनाए गए हर कानून के विरोध में हूं जो आम आदमी की कन्टीन्यूड आजादी के खिलाफ है। यह तो ऐसा ही हुआ "कृष्ण करे तो लीला, राम करे तो पाप"

धन्यवाद। ज्यादा कुछ और नहीं कहना चाहती हूं, सिर्फ अपनी पार्टी की तरफ से यह कहूंगी कि we will abstain at the time of voting.

श्री उपसभापति : धन्यवाद। श्री राशिद अल्वी। पांच मिनट बचे है।

श्री राशिद अल्वी (आंध्र प्रदेश) **:**डिप्टी चेयरमैन साहब, मैं आपका शुक्रिया अदा करता हूं और इस हाउस को मुबारकबाद देता हूं कि इस कानून को उस वक्त जब बी.जे.पी. की सरकार किन्ही भी हालात के अंदर इस हाउस मे पास कराना चाहती थी, उस वक्त भी इस कानून को रद्द कर दिया था। आज एक बार फिर इस हाउस के सामने यह कानून आया है और जहां कहा जा रहा है कि अभी 32 दिन रह गये थे, इसको लैप्स होने के लिए। कोई जरूरी नहीं था इसको रिपील करने के लिए। मेरा कहना है, मैं मुबारकबाद देता हूं सरकार को। देश के अंदर यह मैसेज जाना जरूरी था कि कांग्रेस की यह सरकार पोटा जैसे कानून को रिपील करना चाहती है। अगर एक दिन भी बाकी रह जाता तो भी सरकार को चाहिए था कि पोटा के इस कानून को रिपील कर दें। सरकार काबिलें मुबारकबाद है और नया कानून होम मिनिस्टर ने जिस तरीके से ड्राफ्ट किया है उनकी कॉम्पिटेंस और केपेबिलिटी पर मुझे कोई शुबहा नहीं। लेकिन मैं बी.जे.पी. के लोगों को बताना चाहता हूं कि सरकारें कानून से नही चलती, सरकारें इकबाल से चलती है। यह देश दुनिया की सबसे बड़ी डेमोक्रेसी है। इस देश का कांस्टीच्यूशन दुनिया का सबसे बड़ा कांस्टीच्यूशन है। इस मुल्क के अंदर जितने कानून है, दुनिया कें अंदर उतने कानून कहीं नहीं है। लेकिन पोटा एक ऐसा कानून था जिसके अंदर खुद मुलजिम को यह साबित करना पड़ता था कि वह बेगुनाह है। मैं पोटा को एक शेर के अंदर एक्सप्लेन करता हूं कि

"अकरबा मेरे करे कत्ल का दावा किस पर,

वही मुंसिफ, वही शाहिद, वही कातिल ठहरे"।

फैसला भी वहीं करेंगे, गवाही भी वही देंगे और कत्ल भी वहीं करेंगे।

सर, पोटा कानून इस मुल्क के अन्दर सिर्फ तीन साल रहा। आप मुझे 5 मिनट दे रहे है, लेकिन मेरे पास सारी डिटेल्स है। बीस साल से यह मुल्क टेररिज्म से लड़ाई लड़ रहा है। पिछले तीन साल के अंदर कितने टेररिस्ट पोटा के अंदर गिरफ्तार हुए? पिछलें तीन साल के अंदर पोटा ने इस मुल्क में टेरेरिज्म को कितना खत्म किया? पिछले 15 सालों के अंदर जितने सिविलियन्स मारे गये है, उससे कहीं ज्यादा, उसके आधे से ज्यादा, पिछले छः सालों के अंदर मारे गए है, मेरे पास डाटा मौजूद है। जितने बड़े टेरेरिस्ट हमले इस मुल्क के अंदर हुए, वे पोटा कानून बनने के बाद हुए। चाहे वह पार्लियामेंट के ऊपर हमला हो या किसी और जगह हमला हो। जिस तरीके से बेदर्दी के साथ, डिसक्रिमिनेशन करके पोटा कानून गुजरात के अंदर इस्तेमाल हुआ,जिसका जिक्र यहां पर

बार-बार आ रहा है, और 247 लोग पोटा के अंदर बंद है 247 में से 246 माइनोरिटीज के लोग है। आज बी.जे.पी. यह कहती है ...(व्यवधान)..

श्री ललितभाई मेहता : यह गलत आंकडे है। ...(व्यवधान)...

श्री राशिद अल्वी : मेरे पास डाटा है। यह है मेरे पास। ...(व्यवधान)...

श्री ललितभाई मेहता : बिल्कुल गलत आंकड़े है। ...(व्यवधान)...

श्री दीपांकर मुखर्जी : सही आंकड़ा बताइए, आप। बताइए कितने लोग थे? ..(व्यवधान)...

श्री उपसभापति : आप बैठिए, प्लीज, आप उनको बोलने दीजिए। ...(व्यवधान)...

श्री राशिद अल्वी : सर, मैं एनडीए के लोगों से कहना चाहता हूं। ...(व्यवधान)... अगर यह बात गलत है ...(व्यवधान)...

श्री उपसभापति : नहीं, आप बैठिए।

श्री राशिद अल्वी : सर, मैं आपसे कहना चाहता हूं 246 लोग माइनोरिटीज के थे और अहलुवालिया जी को मालूम है या नहीं, कि बाकी जो एक बादमी था वह सिख कम्युनिटि का था। मैं बहुत अदब से उन लोगों से कहना चाहता हूं, जो 6 साल तक सरकार में रहे है और जिन्होने पोटा कानून बनाया। इस मुल्क के अंदर ऐसे लोग थे, बजरंग दल और विश्व हिन्दू परिषद के लोग, जिनकी जुबानों से जब अलफाज निकलते थे तो * अगर यह पोटा कानून की पहली हथकड़ी इस मुल्क के अंदर पड़नी चाहिए थी तो * के अंदर वह हथकड़ी पड़नी चाहिए थी, वह में पड़नी चाहिए थी, इस मुल्क के अंदर गुजरात का चीफ मिनिस्टर गुजरात के अन्दर* और पोटा कानून की हथकड़ी उन लोगों के हाथों में लगती है, जो मुल्क के अंदर बेगुनाह है। ...(व्यवधान) ....

श्री रवि शंकर प्रसाद : यह जो कह रहे है, क्या मतलब है इसका? ..(व्यवधान).. सही बात कहिए आप। ...(व्यवधान)...

श्री राशिद अल्वी : सर, मैं आपसे कहना चाहता हूं कि वे लोग जो * ...(व्यवधान)...

श्री रवि शंकर प्रसाद : सर, यह क्या कह रहे है? बताएं वह कि इस पार्लियामेंट के ऊपर जो हमला हुआ, उसमें किसको सजा मिली? ...(व्यवधान)...

श्री राशिद अल्वी : सर, मैं कहना चाहता हूं कि सांप एक आदमी को काटता है, लेकिन यह लोग पूरी कौम.....(व्यवधान).....

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*Expunged as ordered by the Chair.

श्री रवि शंकर प्रसाद : सर, यह क्या तरीका है बोलने का? बिल्कुल कम्युनल बात बोल रहे है ....(व्यवधान)..Why is he giving communal colour to it? *{Interruptions)...*

Let him say his point, but...(Interruptions)

श्री उपसभापति : देखिए, जब मैं खड़ा हूं तो आप बैठ जाइए। आप बैठिए, प्लीज। ...(व्यवधान).. यह सही नहीं है । प्लीज आप बैठिए। ...(व्यवधान)... अहलुवालिया जी, आप बैठिए। Please...*{Interruptions)* When the Chair is on his legs... *{Interruptions)* It is unfair...*{Interruptions)* If anything is objectable...*{Interruptions)*

SHRI S.S. AHLUWALIA: When he talked about communal flavour, he uttered such words...*{Interruptions)*

MR. DEPUTY CHAIRMAN: I cannot put words into his mouth.. .*{Interruptions)*

श्री एस.एस. अहलुवालिया :नहीं, यह विश्व हिंदू परिषद का नाम लेकर क्या कहना चाहते है, क्या बोलना चाहते है? ...(व्यवधान)...

श्री राशिद अल्वी : सच्चाई बहुत कड़वी होती है। ....(व्यवधान)...

श्री एस.एस. अहलुवालिया : सर, यह क्या बोल रहे है? ...(व्यवधान)..... कड़वा नहीं है, सच आपको मालूम नहीं है। ....(व्यवधान)..... कानून आतंकवाद के खिलाफ बनाया जा रहा है ...(व्यवधान)... कानून बन रहा है आतंकवाद के खिलाफ और* ....(व्यवधान)... अरे, आतंकवादी जो है बंद करो उसको। ...(व्यवधान)...

श्री ललितभाई मेहता : सर, यह व्यक्तिगत जो कहा है, उसको प्रोसीडिंग से हटाए। ...(व्यवधान)....

श्री उपसभापति : यह अनपार्लियामेंट्री नहीं है।What was unparliamentary here? *{Interruptions)*

श्री उपसभापति : यह अनपार्लियामेंटरी क्या होती है? ...(व्यवधान)... क्या होता है अनपार्लियामेंटरी? ...(व्यवधान)...

श्री उपसभापति :: There are rules, what is unparliamentary ....(व्यवधान)...

श्री एस.एस. अहलुवालिया :*

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*Expunged as ordered by the Chair.

श्री उपसभापति : आप बैठिए, Please ....(व्यवधान)...

श्री एस.एस. अहलुवालिया : *

श्री उपसभापति : नहीं, नहीं, ये नही जाएगा। वो जो बोल रहे है वो रिकॉर्ड मे नहीं जाएगा। सिर्फ राशिद अल्वी जो बोल रहे है वहीं रिकॉर्ड में जाएगा, दूसरा कुछ रिकॉर्ड में नहीं जाएगा। ....(व्यवधान)... आप बैठिए, आप बैठिए ....(व्यवधान)... अहलुवालिया जी आप तो सीनियर मैंबर है। जब चेयर पर मैं खड़ा हूं तब आप shout करते है तो हाउस कैसे चलेगा।ये बात ठीक नहीं है, ये बात ठीक नहीं है। ...(व्यवधान)... अब देखिए वे कुछ उनके विचार हाउस के सामने रखना चाहते है। ....(व्यवधान)... नहीं, नहीं, बहुत से लोग मिल कर बोल रहे है, नहीं आप उनके विचार direct share नहीं करते कि आप वैसा ही कहें। ...(व्यवधान)....

श्री रवि शंकर प्रसाद:*

श्रीमती माया सिंह (मध्य प्रदेश) **:***

श्री उपसभापति : See, See, आपको मैंने कहा कि जो भी उनके विचार है, उनको हक है कि वे हाउस के सामने रखें। यह नहीं है कि आप जैसा चाहते है वे वही बात कहें या वो जैसा चाहते है, आप वही बात करें। ...(व्यवधान)... अब आप बोलिए। please, आप बोलिए। ...(व्यवधान)...

श्री रवि शंकर प्रसाद :*

डा. छत्रपाल सिंह लोधा (उड़ीसा) **:***

श्रीमती सविता शारदा :*

श्रीमती माया सिंह :*

श्री राशिद अल्वी : सर, ...(व्यवधान)....

श्री एस.एस. अहलुवालिया :*

श्री उपसभापति : नहीं, नहीं, यह बात ठीक नहीं है। explain कीजिए, यह बात आप कैसे कहते है? आपको चेयर से परमीशन लेकर बात करनी पड़ेगी।

श्री राशिद अल्वी : सर, मैं पोटा कानून के गलत इस्तेमाल के बारे में बोल रहा हूं। मैं जानता हूं कि अपनी जिम्मेदारी और मैं के वाकयात को यहां दोहराना नहीं चाहता। मैं पोटा पर बहस कर रहा हूं।

श्री उपसभापति :आप Conclude कीजिए, अल्वी साहब Conclude कीजिए। ...(व्यवधान)...

*Expunged as ordered by the Chair.

श्री राशिद अल्वी : सर, मैं यहां गुजरात के वाकयात का जिक्र नहीं करना चाहता। मैं यहां पर पोटा पर बात करना चाहता हूं। मैं जानता हूं ...

श्री उपसभापति :आप बिल पर बात कीजिए। आप बिल पर बात कीजिए। ...(व्यवधान)... आप पोटा के कानून Unlawful Activites (Prevention) Amendment Bill पर बात कीजिए।

श्री राशिद अल्वी : सर, मैं उसी की बात कर रहा हूं। चूंकि ....(व्यवधान)... । चूंकि मैं जनता हूं कि गुजरात का जिक्र करूंगा तब मैं जख्मों पर जमें हुए खुरंड को उखाड़कर तकलीफ नहीं पहुंना चाहता। मैं जानता हूं, जानता हूं कि खुरंडो को उखाडूंगा तो उसमें से खून भी बहेगी और पीप भी बहेगी। ...(व्यवधान)... बहता हुआ खून न हम बरदशत कर पाएंगे न आप बरदाशत कर पाएंगे। लेकिन सर, लेकिन सर, ...(व्यवधान)..

श्री उपसभापति :आप उनको बोलने दीजिए।नहीं,आप चेयर से परमीशन लेकर बात कीजिए1 ऐसे Intervention yield नहीं होगे। जो आप कहेंगे वह रिकॉर्ड में नहीं जाएगा, क्योंकि वह yield नहीं होंगे।

श्रीमती सविता शरदा :*

श्री उपसभापति : अगर वो कह रहे है तो उसके लिए चेयर कोई डायरेक्शन देगी। गुजरात का नाम लेकर कोई यह तो नहीं कह सकता। ....(व्यवधान)... जब आपका मौका आएगा,तब आप बोलिएगा। ...(व्यवधान)... आप कंक्लड कीजिए।

श्री राशिद अल्वी : सर, नेशनल ह्यूमन राइट्स कमीशन ने पोटा को एबोलिश करने की सिफारिश की थी। नेशनल ह्यूमन राइट्स कमीशन ने कहा था कि इस मुल्क के अंदर हर गुनाह के लिए कानून मौजूद है। मैं इसको पढ़कर आपका वक्त खराब नहीं करना चाहता हूं। लेकिन इतना जरूर कहना चाहता हूं कि सरकार इस बात के लिए काबिले मुबारकबाद है कि यहां पर पोटा खत्म हो रहा है और ज्यादा तफसील की बात नहीं करके सिर्फ इतना जरूर कहूंगा कि टेरोरिज्म को खत्म करने के लिए सिर्फ कानून की जरूरत नहीं है। आन्ध्र प्रदेश के अंदर काबिले मुबारकबाद है कि आन्ध्र प्रदेश का चीफ मिनिस्टर नेक्सलाइट के साथ कुर्सी पर बैठकर बात कर रहा है, आन्ध्र के अंदर टेरोरिज्म को खत्म करने के लिए बातचीत की जा रही है, कश्मीर के अंदर तमाम लोगों से बातचीत करके टेरोरिज्म को खत्म करने की कोशिश की जा रही है। ऐसा इस देश के अंदर पहले कभी नहीं हुआ है। मैं अपने दोस्त अरूण जेटली साहब से कहना चाहता हूं कि कांग्रेस पोटा पर कोई राजनीति नहीं कर रही है। कांग्रेस अकेली पार्टी है, जिसकी अध्यक्षा ने, जिसके पास पांच कदम के

*Not recorded.

हिन्दुस्तान पर हिन्दूस्तान का प्रधान मंत्री पद था और आपको शायद इस बात का अहसास नहीं है कि हिन्दुस्तान का प्रधान मंत्री अकबरे आजम और सिकन्दरे आजम से ज्यादा ताकतवर है। उन्होने कुर्बानी देने का काम किया है कांग्रेस ने वोट की राजनीति नहीं की है। (समय की घंटी) इसलिए मैं सरकार से इस कानून के लिए मुबारकबाद देता हूं और उसके अनलॉफूल एक्टिविटीज (प्रिवेंशन) अमेंडमेंट बिल, 2004 की सपोर्ट करता हूं। थैक्यूं।

SHRI MANOJ BHATTACHARYA(West Bengal): Mr. Deputy Chairman, Sir, I am very grateful to you for giving me this opportunity to take part on this debate. Sir, I shall not take much time.

MR. DEPUTY CHAIRMAN: You have got three minutes.

SHRI MAJOJ BHATTACHARYA: Sir, I rise on my legs to oppose the Statutory Resolution, moved by my colleague, Dr. Murli Manohar Joshi; and also in support of the Prevention of Terrorism (Repeal) Bill, 2004, moved by the hon. Home Minister, Shri Shivraj V. Patil. I also stand here to oppose the Statutory Resolution, moved by Dr. Murli Manohar Joshi and support the Unlawful Activities (Prevention) Amendment Bill, 2004, moved by Shri Shivraj V. Patil.

Sir, before coming to this House and before standing to take part in the debate, I was going through the copy of my speech which I made in the Rajya Sabha at the time when we were discussing the POTO to be converted into POTA, Sir, I repeat or rather I reiterate that at that time also I had told that I am not worried, I am not anxious about the misuse or abuse of POTA, I was anxious about the use of POTA. And, my anxiety has been proved to be a fact that POTA has been misused. It has been used with an intention of combating or throttling the democratic voice of the people, not exactly against the terrorists. It may be that, here and there, terrorism has also been taken care of, to an extent, But, in a majority of cases, it has been misused. It has been referred to, time and again, that in Jharkhand some 14 year old boy, 12 year boy and a 82 year old were detained under POTA, It was the use of POTA. It was the abuse of POTA. That is what the intention of the erstwhile NDA Government was, Sir, this was done on the specious plea or rather on the pretext of complying with the U.N. Resolution No. 1373. The U.N. Resolution never said that you should use the POTA or you should evolve some such law that will go against the voice of the people, that will be used to throttle the voice of democracy in a country.

Sir, it has been amply proved that POTA in different States—I am not going to refer to some particlar State—has been used in such a way so that it satisfies the political intention or political points of some of the then rulers. Sir, I have said it earlier and I would, once again, reiterate that so far as terrorism is concerned, we must look into what the breeding ground of . terrorism is. It is the rempant unemployment, abject poverty, social discrimination that breeds terrorism. Sir, the Governments which have failed to take care of these problems—social discrimination, religious discrimination, gruesome unemployment problem as also the abject poverty—have manufactured some synthetic fears in the minds of people. Sir, I know, these synthetic fears are manufactured by different States in this would to satisfy their own derogatory political interests. And, of course, I understand that politics is nothing but economics in concise form. And some of the political parties are committed to serve the purpose of a minority of the society, that is a handful rich, and they were absolutely committed for that. To satisfy their own masters, they have manufactured the synthetic fear in the minds of the people in the name of terrorism, without going into redressal of problems of social discrimination, problems of unemployment and problems of *...{Interruptions)...*

SHRI ARUN JAITLEY: Are you nationalising terrorism?

SHRI MANOJ BHATTACHARYA: Yes, I am talking about terrorism. Mr. Arun Jaitely, you must understand that. In that, you have failed, That is why, you have been rejected by the people of this country. You have failed to understand. You mustfry to understand what unemployment is. That is why, the people's mandate has gone against them, Sir. They have failed to appreciate that unemployment is the breeding ground. Unemployment harbours terrorism. Unemployment harbours terrorism, Mr. Arun Jaitly. You will never understand, because you are living in an ivory tower. You will never understand the pathos of the people. You will never understand the agony of the unemployed people. (Interruptions) Mr. Arun Jaitley, you will never understand the agony of the socially discriminated people. I will tell you, you will never understand.

श्री रूद्रनारायण पणि : उपसभापति महोदय, सरकारी आतंकवाद ....(व्यवधान)...

श्री उपसभापति : Everytime you stand up.(Interruptions) आप बैठ जाइये। ...(व्यवधान)... आप बैठ जाइये। ....(व्यवधान)...

श्री रूद्रनारायण पणि :पश्चिमी बंगाल में सरकारी ....(व्यवधान)...

श्री उपसभापति : आप क्यों बीच में इंटरप्ट कर रहे है? ...(व्यवधान)... यह गलत बात है।....(व्यवधान)... आप बैठ जाइये। ...(व्यवधान)...आपको किसी मेम्बर को इस तरह से इटरप्ट करने की जरूरत नहीं है। ...(व्यवधान)... आप बैठ जाइये। ...(व्यवधान)... आप प्लीज बैठ जाइये। ...(व्यवधान)... आप हाउस की हैल्प नहीं कर रहे है। ...(व्यवधान)... प्लीज बैठ जाइये। ...(व्यवधान)...

SHRI MANOJ BHATTACHARYA: Sir, you will certainly appreciate, to me, neither the Government is supreme nor courts, not even the Parliament. To me, the people of this country are supreme. And, this Act, the POTA, has gone indiscriminately against the people. That is why, i must compliment the hon. Home Minister. He has taken the right recorse of repealing this law. I know, they are not going to stop here only.

Sir, I know, the UPA Government is also planning to move in this House the Employment Guarantee Bill. The rural employment guarantee law will help the crores of people who are languishing. Mr. Arn Jaitly is looking at me but he will not understand. The people in the villages or the rural areas are languishing in abject poverty. Once that is taken care of Sir, I am sure, terrorism can be taken care of. No amount of law is going to help it. Mr. Jaitley is an authority in law. He can certainly refute me as far as some legal points are concerned. I am not going to contest him.

MR. DEPUTY CHAIRMAN: You see, there are six more Members to speak. Please conclude.

SHRI MANOJ BHATTACHARYA: I am assuring you, Sir, no law, no police force, no army can combat terrorism. I am saying it very loudly. Unless it is socially and economically taken care of, unless the breeding ground that harbours terrorism is taken care, terrorism can't be taken care of.

My approach is a wholesome approach. I am trying to plead before you, Sir, that we must take the wholesome approach to combat terrorism, lam once again repeating, to me, the nation is the most important and to save the nation, I am sure, the UPA Government will not stop here—just by introducing some law.

I will just mention one or two apprehensions of my mind. As you know,

in the Unlawful Activities Prevention (Amendment) Bill—I will just quote one or two clauses. I am not a master of law. I will not speak that legally. Sir, I was urging upon the hon. Home Minister on the seizure clauses. The Home Minister will certainly appreciate, many times, this seizure clauses lead to tampering of list of seizures by the investigating agencies. Acriminal is not a criminal until he is proved under the law. I know a live case. The hon. Home Minister has also spent some time and he has tried to settle the case.

MR. DEPUTY CHAIRMAN: Please conclude.

SHRI MANOJ BHATTACHARYA: I am just concluding. I am just expressing my anxiety. Sir, in Manipur, Mr. Home Minister will certainly recall, on 11th July of this year, one Manorama Devi, when she was arrested at 12.30 or 1 O'clock at night, you know how a serious situation has evoked in Manipur and in the entire North-East. The list of seizure that was given and the list that was produced was something else. So Sir, how to take care of this sort of discrimination? This has to be noted. Sir, I have another confusion.

MR. CHAIRMAN: Please conclude.

SHRI MANOJ BHATTACHARYA: Sir, I am coming to my last point. *(Interruptions)* Sir, had they not interrupted me, I would have completed much earlier. Sir, my question is in Clause 6(b), it says, 'a person who is or continuous to be a Member of such association, or voluntarily does an act...." Sir, here it should be written that whoever does with a malafide intention, because sometimes it is voluntary, we should take action. Otherwise it is confusing. So, therefore, I request the Home Minister to look into this and if at all it is possible to add, 'with a malafide intention, aiding or promoting in any manner the objects of such association and in either case or in possession, etc. etc....' may be added.

MR. CHAIRMAN: Please conclude.

SHRI MANOJ BHATTACHARYA: Thank you every much Sir, I am not going to extend my time. Thank you.

श्री तारिक अनवर (महाराष्ट्र) **:**उपसभापति महोदय, राष्ट्रीय सुरक्षा हमारे देश के हर नागरिक के लिए महत्वपूर्ण है। आतंकवाद हमारे देश से हमेशा के लिए समाप्त हो, यह प्रयास हम सब लोगों का है। एक लम्बें समय से हम आंतकवाद से जूझ रहे है। आतंकवाद और उग्रवाद सिर्फ हमारे देश की

सुरक्षा के लिए ही खतरा नहीं है बल्कि जो हमारे देश का विकास है, वह भी उस कारण से अवरूद्ध हो रहा है। आज देश की जो मूल समस्याएं है,जिनका जिक्र अकसर हम लोग इस सदन में करते है-चाहे वह गरीबी है, बेरोजगारी है या हमारे मूलाधार का विकास है-वे सारी चीजे उससे जुड़ी हुई है क्योंकि हमारे जो भी साधन है, जो भी हमारी पूंजी है, वह आज हमारी सुरक्षा पर खर्च हो रही है। इसलिए हर व्यक्ति, जो इस देश का नागरिक है,जिसको इस देश से प्रेम है, वह चाहेगा कि इस देश के अंदर शान्ति और व्यवस्था हो और आतंकवाद तथा उग्रवाद इस देश से समाप्त हो। इसी उद्देश्य से जब 2002 में तत्कालीन जो सरकार थी, एनडीए की सरकार, उसने जब पोटा कानून को लाने की बात कही थी तो उस समय हमारी पार्टी, राष्ट्रवादी पार्टी ने उसका समर्थन किया था। इस उद्देश्य से समर्थन किया था कि जो देश के अंदर आतंकवाद बढ़ रहा है, उग्रवाद बढ़ रहा है, उसको नियंत्रित करने के लिए उसको समाप्त करने में यह कानून लाभदायक होगा। लेकिन जो कुछ पिछले दो-तीन साल में हम लोगों ने देखा और इस देश के लोगों ने महसूस किया, वह यह महसूस किया कि पोटा का भी उसी तरह, टाडा की दुरूपयोग हुआ है। उसका भी अपने राजनैतिक प्रतिद्वंद्वियों के दमन के लिए, किसान-मजदूर आंदोलन में जो लोग है, उनको दबाने के लिए इस्तेमाल होता है। सबसे बड़ी बात जिसका जिक्र अभी सभी लोगों ने किया है कि एक समुदाय विशेष के खिलाफ उस पोटा का इस्तेमाल हुआ और अगर यह कहा जाए कि इस देश के अल्पसंख्यक को आतंकित करने का काम पोटा के जरिए कराया गया तो वह गलत नहीं होगा। मैं गुजरात का नाम नहीं लूंगा। भारतीय जनता पार्टी द्वारा जो सरकारें जिन राज्यों में चल रही है, उन राज्यों में किस प्रकार से पोटा का दुरूपयोग हुआ है, सभी लोगों ने इस बात का जिक्र किया है। मैं उसमें सदन का समय बर्बाद नहीं करना चाहता हूं। मैं इस सरकार का और गृह मंत्री जी का स्वागत करता हूं कि पोटा को समाप्त करने के लिए वे यह विधेयक लाए है। यह बात बिलकुल सही है कि कोई भी सरकार, जो लोकतांत्रिक व्यवस्था में है, उसमें जो पिछली गलतियां है-टाडा और पोटा के जो पिछले अनुभव है? उसकी त्रुटियों को खत्म करके सही मायने में हमारे देश के हित में, राष्ट्रीय हित में और ह्यूमन जिस राइट्स का जिक्र किया गया, जो बहुत ही जरूरी है, उन बातों का ध्यान रखकर जो विधेयक लाने का काम हमारे गृह मंत्री जी ने किया है, हम उसका समर्थन करते है। लेकिन हम सरकार से यह अपेक्षा करते है कि वह इस बात के लिए सदन को और पूरे देश को आश्वस्त करेगी कि जिस तरह से टाडा का और पोटा का दुरूपयोग हुआ है, इस देश का जो अल्पसंख्यक समुदाय है, जो मजदूर है, किसान आंदोलन में है,जिनको दमन करने में इसका इस्तेमाल हुआ है,किसी भी प्रकार से इस आने वाले संशोधन के बाद ऐसा कुछ नहीं होगा, ऐसा हमको विश्वास है। इसी के साथ गृह मंत्री जी द्वारा जो आतंकवाद निवारण विधेयक लाया गया है और उसके साथ ही साथ जो विधि विरूद्ध क्रियाकलाप निवारण संशोधन विधेयक सरकार ने रखा है, गृह मंत्री जी ने रखा है, उसका हम अपनी पार्टी की ओर से समर्थन करते है।

श्री दत्ता मेघे (महाराष्ट्र) :महोदय, मैं तारिक जी के विचारों से एसोसिएट करता हूं।

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Mr. Deputy Chairman, Sir, while welcoming both the Bills, I only make a request to the hon. Home Minister that I require some additional safeguards in the proposed amendment. I know that terrorism is a global phonomenon and our country, under international obligation, has to pass this Bill. But one thing should not be forgotten. The golden rule in criminal law is, even if thousand culprits escape, the law must ensure that not even one innocent be punished.

SHRI N.JOTHI:*

SHRI R. SHUNMUGASUNDARAM: Sir, I will come to him later.

SHRI N. JOTHI: *

MR. DEPUTY CHAIRMAN: I tell you, Mr. Sundaram, don't take cognisance of what he has said.

SHRI R. SHUNMUGASUNDARAM: Sir, it is better to reply to his query.

SHRI N.JOTHI:*

SHRI R. SHUNMUGASUNDARAM: Sir, has he taken permission from the Chair?

MR. DEPUTY CHAIRMAN: Now, he has not taken permission from the Chair...*(Interruptions)...* Mr. Jothi, he has not yielded...*(Intenvptions)...* Don't interrupt him ...*(Interruptions)...* Whatever Mr. Jothi says will not go on record.

SHRI N.JOTHI:*

SHRI R. SHUNMUGASUNDARAM: Sir, what I am saying is that the law must be vigilant and it must ensure adequate safeguards. I only request the hon. Minister not to have terrorists in mind while legislating, but he should think about the stigma that has been attached to a human being who was falsely implicated, prosecuted and punished. That is the worst effect that will have on a human being. Only humane persons can understand that. Others will not be able to understand the agony of a person who had been attached with a stigma through a false prosecution. No purpose will be served in merely omitting stringent bail provisions because we have seen the case of Mr. Vaiko. Mr. Vaiko did not bother about coming out on bail...*(Interruptions)...*

*Not recorded.

SHRI N. JOTHI; Sir, the case is *suojudice.* How can he speak when the matter is before the Supreme Court?

MR. DEPUTY CHAIRMAN: Mr. Shunmugasundaram, we should not discuss the matter which is *subjudice ...(Interruptions)...*

SHRI R. SHUNMUGASUNDARAM: Mr. Vaiko did not bother about coming out on bail *...(Interruptions)...*

SHRI N. JOTHI: The matter is before the Supreme Court. He had lost his case before the trial court. So, he had gone to the Supreme Court *...(Interruptions)...* We cannot discuss that *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. Sundaram, don't refer the matter which is *sub judice.*

SHRI R. SHUNMUGASUNDARAM: Sir, I am only attempting to say.. *.(Interruptions)...*

MR. DEPUTY CHAIRMAN: Again if you take the name of Mr. Vaiko, it will not go on record...*(Interruptions)...* Don't mention it...*(Interruptions)...*

SHRI N. JOTHI: He has no points to say on the proposed Bill. Hence, he is speaking.*

SHRI R. SHUNMUGASUNDARAM: I am not going into the merits.*

I am only saying that* was imprisoned for 560 days, and he did not bother to come out... *(Interruptions)...*

MR. DEPUTY CHAIRMAN: Nothing will go on record. *...(Interruptions)...*

SHRI R. SHUNMUGASUNDARAM: Sir, I am only saying that the stigma was caused to such a political leader. If he is falsely prosecuted... (*Interruption^...*

MR. DEPUTY CHAIRMAN: No; No. Nothing will go on record. *...(Interruptions)...* You make your points...*(Interruptions)...*

SHRI R. SHUNMUGASUNDARAM: Sir, I am only saying that the stigma caused to a person causes much damage. Therefore, I would like to request the hon. Minister to please ensure that stigma is not caused to anybody. That is why, Sir, I have two amendments. And, the amendments to the

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*Not recorded.

effect that the Review Committee, which was provided in the old Act, through Act No. 4 of 2004, should be incorporated in this. I have moved these amendments. Therefore, please permit me to canvas for those amendments. The Reivew Committee, which was provided under the POTA Act, had salient provisions to review the *prima facie* the nature of each case. That has to be brought into the new section, section 37. Therefore, I would like to request the hon. Minister to incorporate that. Only with that view I am moving...*(Interruptions)...*

MR. DEPUTY CHAIRMAN: No; no, amendments would be moved later on *...{Interruptions)...* You please conclude.

SHRI R. SHUNMUGASUNDARAM: Sir, will I get a chance later on? *...{Interruptions)...*

MR. DEPUTY CHAIRMAN: When amendments are moved, you can move your amendments also.

SHRI R. SHUNMUGASUNDARAM: Okey, Sir. Thank you very much.

MR. DEPUTY CHAIRMAN: Last speaker, Kumari Nirmala Deshpande.

KUMARI NIRMALA DESHPANDE (Nominated): Mr. Deputy Chairman, Sir, I am grateful to you for remembering that someone exists, though at the last moment. I would like to congratulate the Home Minister for the right action, in the right direction, at the right moment. This action, I am sure, will take the country to a forward-looking way. Some of my friends have already referred to it. Let us find out the reasons of terrorism. Why is there violence/ Why is there unrest? A great spiritual leader wrote to the President of the United States, after 9/11, that those attacks need to be condemned in the most severe terms, but there is no effect without a cause. So, kindly find out what is the cause that led to this effect. The same applies to terrorism; the same applies to all kinds of such activities. What are the reasons? Let us find out. As my friends have already said, poverty, disparity, vulgar show of wealth at one end and empty stomachs at the other end- both exist in the same country. I was once asked. "Do you belong to India or Bharat?" I said, "It is one and the same thing." I was told by a friend, "No, India lives in metropolitan cities and Bharat lives in poor villages." So, I would like to request this august House to find out the reasons that let to terrorism. And, let us remove those reasons. May I quote Subramanayam Bharati, whose statue was unveiled the other day?

There may be some mistake in my pronunciation. It says "If one man goes without food, I will burn the whole world", the great poet has said so. I would also like to draw your attention, Mr, Deputy Chairman, Sir. that we are living in - well, within a Month — 2005. The whole world is changing. We are living in the space age, and if we have the old mindsets of the 18th or the 19th century, we will not be able to cope up with the problems. New era needs a new mindset. That is needed for solving the so-called -1 am deliberately saying this - problem of national security. Security lies not only in big armies, but in contended, happy, peaceful people.

So far as our region is concerned, I just met a delegation from Pakistan. They were high-ups; Air Marshals, Generals, Admirals and Retired Members who came for peace. The Air Marshal said, "We have come to the land of Gandhi." Gandhi gave us a world of wisdom that violence and wars can solve no problem; what we need is non-violence. He referred to Gandhi and said, "Let us get out the old mindsets and think that war is out of date. Let us rule out war and find out new ways and means to establish friendship, better relations so that we can, together, solve this so called problem of national security."

Before I conclude, I would like to tell a short story though my young brilliant lawyer friend is not here. I come from a family of lawyers; so, there is no disrespect to anybody. A spiritual leader told this story. There was a dispute between the residents of Heaven and Hell. Ultimately, they both went to the court. When the case was admitted, there was jubilation in Hell. The residents of Heaven said, "The case will take much time, then, why are you having jubilation? They said, "Who.is going to argue your case? All are here!" So, let us hope that a person like me be with those who have no one to plead *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Mr. *Miniter...(Interruptions)...*

SHRI N. JOTHI: I hope this is not *Hell...(Interruptions)...*

MR. DEPUTY CHAIRMAN: Dr. Murli Manohar Joshi is absent. Mr. Minister.

प्रो. अलका क्षत्रिय : एक मैम्बर के बोलने से क्या फर्क पड़ता है? ...(व्यवधान)... मेरा भी नाम है ...(व्यवधान)...

SHRI SHIVRAJ V. PATIL: Mr. Deputy Chairman, Sir, I would like to

thank the hon. members for the good points they have made while taking part in this debate. It may not be possible for me to reply to all the points that have been made by the hon. members. I would endeavour to reply to as many points as is possible. Sir, TADA was passed and it was used to control and contain terrorism in India. But, people complained against it. And, many of the people who are speaking in favour of POTA today were the members who had objected to TADA also. The then Government decided to allow the TADA to go out of the statute book in deference to the opinion expressed by the people in the country. Since that time, the Congress Party is not in favour of any law which is of draconian nature, and, that is why, when the NDA Government tried to have POTA, members of the Congress Party and Members of the allies objected to it. it was passed in the Lok Sabha; it was defeated in the Rajya Sabha, and, then, a Joint Session was called, and, there also, Members of the UPA objected to the passage of that Bill. After that, Elections took place, and in the Election Manifestoes, the political parties who are part of the UPA Government and who are supporting the UPA Government did promise to the members of our society that POTA would be repealed. Then, the Common Minimum Programme was made, and in that Common Minimum Programme, they very specifically stated that the POTA will be repealed, and I seek your permission, Sir, to read four-five lines which are relevant to the terrorism and POTA in our country. I quote, "The UPA has been concerned with the manner in which the POTA has been grossly misused in the past two years. There will be no compromise in the fight against terrorism. But given the abuse of POTA that has taken place, the UPA Government will repeal it." We have made it very clear that it would be repealed; the POTA would be repealed. And, this was stated after the General Elections had taken place. A charge is levelled that for political reasons, the POTA is being repealed. Why should we say this? General Elections have taken place; the mandate has been given; the Government has been formed; and we are not going before the people asking for the votes now. What was stated by the people was accepted, and we are acting on the mandate which is given to the Government and this is not for political purposes. We had allowed TADA to go out of the statute book; we had opposed the POTA when the POTA was being enacted and, later on, in the manifesto and in the Common Minimum programme also, we had said that the POTA would not be there. This is exactly what we are trying to do. There is consistency. This is not for political reasons. This is because we believe

in it. This is because we think that a draconian law of this nature need not be there on the statute book, and, that is why, the Government has been on this and the Government has come before this House with these Bills to replace those Ordinances.

Sir, one more point which has to be very clearly understood. While reading, what has been mentioned in the Common Minimum Programme is this. On one hand, we do not want a draconian law like POTA to be on the statute book, on the other, we are very clear in our mind that the terrorist activities also have to be curbed, have to be controlled, have to be contained. Here, we are trying to balance these two things. We do not want that the innocent people should suffer at the hands of the terrorists. We do not want that the innocent people should suffer because of the draconian law. The duty of the Government is to balance these two things. The duty of the Government is to see that the innocent people do not suffer because of the activities of the terrorists, as well as because of the misuse of a draconian statute. Now, this is exactly why we are trying to do it. We are trying to reduce the rigour of the law and we are, at the same time, trying to see to it that the innocent people do not suffer at the hands of the terrorists. This is the balance that we are trying to strike.

If one has heard the speeches that have been made by hon. Members in this House very carefully, three points have been made. Three main points have been highlighted; these have been thrown up. One point is, 'don't repeal POTA.' It was said very categorically that a 'draconian'— they didn't say 'draconian', but a law of this nature is required, so, don't repeal it.

There was another view that POTA was not required and also any other law, which could really help controlling terrorism, was not required. I do think that they have their own views, very sincere views, and we respect these views. We are not saying that we are not going to respect them because you are wrong, or that you are doing it for political reasons, and all that. But as a Government having accepted the truth in the statements made on both the sides, we are coming to the conclusion that we, as a Government, have to take a balanced view. We do not want a draconian law to be on the statute book. We do not want, at the same time, the innocent people to suffer. That is why, we are repealing the POTA, and that is why, we are introducing some provisions in the unlawful Activities

(Prevention) Amendment Act, so as too see that innocent people do not suffer and terrorist activities do not spread in our country. If we are doing it, we are not doing it for political purposes. But we are doing it to do justice.

(MR. CHAIRMAN in the Chair)

Sir, having said this, I would like to come to the specific provisions in the Bills which have been introducted. I must say that we are grateful to the hon. Member, Mr. Fali S. Nariman, who was very clear and erudite in commenting on the provisions of the Bills. His speech has made my task easier. His speech has explained to us, in clear terms, as to what is strived to be done through these two Bills.

Sir, I am not going into all the provisions of the Bill. I am going to cover the points which are involved and which are relevant to the provisions in the Bill. What are the obnoxious provisions in the law, that is, PQTA, and what is it that we are trying to do with those obnoxious provisions? As a matter of fact, the POTA provided that bail will not be easily given, and many Members in this House said that the law should be 'bail' and not 'jail'. In fact, law does not treat an individual as having committed that offence before the decision is given. He is the accused and not the offender. A benefit of doubt is given to him. So, before the decision is given, he should be at liberty to come out of the jail, if it is not necessary for him to be there. If he is not going to abscond, if he is not going to interfere with the witnesses, if the punishment is not heavy, and even if that punishment is life punishment, the general rule is that bail should be given. Even in murder cases, even in cases where life sentence could be pronounced, or death sentence could be pronounced by courts, the present Criminal Procedure Code provides that after some days, bail should be given to the accused; If the chargesheet is not filed within a particular period of time, bail should be given. So, the gravamen of the laws we have before us is that the bail should be the rule and jail should be an exception for those against whom the judgement has not been pronounced. After the judgement has been pronounced, of course, they will be in the jail. What did POTA provide? POTA provided that anybody could be arrested on suspicion; anybody could be kept behind bars for many days, for many more days than under the ordinary law he could be put there. Not only that, there was a very, very peculiar provision in POTA and that peculiar provision provided that bail shall be given by the court only if the court comes to the conclusion

that the accused was an innocent person. This is a very strange provision. If the court is coming to the conclusion that an accused is an innocent person, the case should not be continued against him. That is a sort of judgement given in the case, and yet in this case it was provided, while giving the bail, that this aspect should be looked into whether the person is innocent or whether the person is guilty. Now, if the person is innocent, only then the bail should be given. This was a very peculiar provision and that is why many people suffered. I am not going to mention the names of persons who have suffered and who have remained behind bars. But we know that the people have suffered, and we know exactly for this reason people have objected to this law. They have said that if a person is not guilty, if he is not pronounced to be guilty, why should he remain behind bars unnecessarily? If he can be allowed to come out, let him allow to come out, and then let him enjoy the freedom, or let him discharge his duties as any other citizen can do. This was the most important obnoxious provision which was there in POTA, and this is not there in the new law which we are presenting to this house, and it may be passed by this house and by the Parliament.

Now I come to confession. Many hon. members have spoken about the confession including Mr. Jaitley, who is a very, very well-known lawyer and

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he knows law probably better than some of us do. At least, I do not know as much as he knows and as much as Shri Bhardwajji knows. About the confession, which is given to the Police, POTA said, "is admissible in a court of law." What does this mean? The Constitution of India provides that a person should not be compelled to be a witness against himself. I don't have to explain this point to hon. Members and to learned lawyers. The Constitution specifically says that nobody should be compelled to be a witness against himself in a criminal case. What is it if this confession is not being a witness against oneself in a court of law? Sir, the law provides that in some cases the accused may confess, and the ordinary Criminal Procedure Code provides that if an accused wants to confess voluntarily what is important - very clearly it was explained to us by Shri Bhardwajji when Shri Jaitley was speaking on this point - is that confession has to be voluntary, and that confession has to be truthful. When terrorists, who are ready to kill themselves and who are ready to face any danger to life, are arrested, do you think that they are going to make voluntary confession to the Police. Now, is this an acceptable statement, or a stand? It has to be

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voluntary, and an ordinary Criminal Procedure Code provides that when an accused says that he wants to make a voluntary statement of confession, he has to be taken to the Magistrate and the Magistrate does not record his statement at the first instance. He says: "Look, if you make the confession it will be used against you. You can be punished on the basis of this confession. So, go back and come again to me after having thought about this because nobody would have explained to you, the Police would not have explained to you. But I am explaining to you that this confession may be, used against you in a court of law and you will be punished on the basis of this confession. So, I am not recording it today. You go back and come again, and I Will record your confession when you next time also say that voluntarily I am willing to make this confession."

Then, the confession is recorded by the Magistrate and Magistrate is not interested in the case. Magistrate is an independent person who has to give the judgement, who has to give the decision. He is an independent person, whereas the police, who is asked to investigate into the matter, if the confession is made to him, that confession is made to an interested party in the case. I am not saying that the police people are not honest and they are out only to put the people behind bars and. persecute and prosecute them. I am not saying that. They are good people. And, at least, I know how good they are because they sacrifice their lives for protecting innocent persons in the society. They would not ordinarily go against them, but the human nature is that if i am standing on behalf of one party, appearing on behalf of one party, I sometimes get inclined to think that what I am saying is correct, and, so, it should be believed, and so, I become an interested party, and that is why, the criminal jurisprudence, that is available not only in India but in the world also, says that the interested party's evidence has to be taken with a pinch of salt while convicting a person. That is why, this confesion to the police is not accepted. I do realise that many police officers and policemen think that look, we are out to sacrifice our lives and we have collected this evidence and our evidence, who are ready to sacrifice their lives, is not accepted in a court of law. I can see their point of view. I can sympathise with them and I would like to say that well, this is true, hundred per cent true, and yet in order to see that the innocent persons should not be convicted, the procedure has been with respect to the confession not only today, but for hundreds of

years, this has been the procedure that the concession given to the interested party, to the police especially, will not be acceptable, will not have an evidentiary value in a court of law. Now, this was there in the law. Now, Mr. Jaitley was very right when he said that if this kind of provision is there in other laws, you allow this kind of provision to continue in the laws and you are repealing this provision from this law, why are you doing this. I can see the point which he is making. I cannot quarrel with him. I cannot oppose it validly when he says this thing. But, POTA is something in which generally, the lives of the innocent people and the lives of the terrorist are also involved. There are people who are going with guns, AK-47s, grenades, bombs and landmines and killing people and when punishment is given, their life is also brought to an end. Now, that is exactly why in such cases, when the sentence, which can be awarded, is life sentence or death sentence, one has to be very careful. And, that is exactly why this is a law in which the maximum punishment—What is the maximum punishment which can be given—is the death punishment and for a good man, the death of his reputation. But, in this case, the maximum punishment is really death and that is why, this provision, which was there in POTA, has been removed from the law. The third point, Sir, very rightly and very clearly and in very erudite manner, was explained by many hon. Members and Mr. Nariman explained it in the best possible manner. Now, I come to the provision regarding onus of proof. Who has to prove that a person is guilty? POTA says that the accused has to prove that he is innocent. Ordinary ciminal law says that the prosecution has to prove that the accused is guilty. There is a lot of difference. Now, the prosecution is supported by the State Government. The State authority is there. Prosecution has all the wherewithal required for investigation, for conducting the case and for seeing that the guilt is proved, whereas the accused person may not have that kind of a provision with him to defend himself. It is very difficult for him to prove that he is not guilty. If we are asking that he should be asked to prove that he is not guilty, what is it that we are asking? We are asking that a negative should be proved. And, when the prosecution has to prove that he is guilty, a positive has to be proved. The psychologists and the jurists have come to the conclusion that proving negative is more difficult than proving positive. Now, here the prosecution should prove that he is guilty, and, the burden should not be shifted to the accused to prove that he is not guilty. But this is exactly what the POTA was trying to do. In many other cases also, in certain circumstances, the burden of proof

shifts from the prosecution to the accused, and I know that, but in certain cases. But, in POTA this was the most important thing. The reliance was on the accused proving that he is not guilty, and, not on the prosecution proving that he is guilty. This was one of the most unfortunate provisions placed in the law.

Now, Sir, these were the provisions, which were there, and, Mr. Nariman very rightly said that as far as the substance is concerned, there is no difference, but as far as the procedure is concerned, there is a lot of difference between the two laws. Now, what is the difference between the substance and the procedure? The difference between the substance and procedure is that the substantive law of punishment comes into force, becomes effective after the judgement is given. Whether he will go to the jail, for ten years, for life, or, for death...*(Interruptions)*...

SHRI ARUN JAITLEY. Sir, I don't think that any of us mentioned the point with regard to onus of proof. Hon. Minister may like to have a look at it. Because even in POTA, there was no such provision regarding the onus of proof that he is labouring on.

SHRI SHIVRAJ V. PATH: Sir, I think it is there. I am not going into all the details. It will be very difficult. Otherwise, I would be arguing these laws for hours together which facility, Sir, I think you will not give to me. It is not possible for his House. *...(Interruptions)...* Sir, then, I will not go to many other things. It is not necessary. It was explained to him, and, please allow me to complete my reply, and, at the end if there are other points, and, if the Chair allows, I will reply.

SHRI FALIS. NARIMAN. Sir, section 53 of the POTA says that if there is a presumption as to a terrorist offence, that if certain circumstances were proved, that Special Court must draw an adverse inference against the accused *...(Interruptions).*

SHRI N. JOTHI: Sir, the adverse inference...(Interruptions)...the burden of proof is section 29 like any other *...(Interruptions)...*

SHRI SHIVRAJ V. PATIL: Now, you may be a present lawyer; I was a lawyer. I am not going to dwell on these nice legal points now. I will disuss this thing later on. Sir, having Said this much about the repeal, I come to what is tried to be introdued in the Unlawful Activities Prevention Act. Now, why have we to consider these two aspects? Some people are saying that

you had repealed POTA but then you have introduced the POTA from back door in the form of Unlawful Activities (Prevneion) Amendment Bill. Now, these two statements taken in their extreme forms do not present the picture of reality, the truth. The truth lies in between. Now, what is tried to be done by amending the Unlawful Activities Prevention Act? Sir, one of the important things is the definition. Terrorism was not defined, and, that is why there were difficulties. We had many laws, and, yet 'terrorism' was not defined.

And, that is why judgements were given that terrorism is not defined, punishment and all those things. What is tried to be done is to retain the definition of terrorism in the new law so that if any occasion arises for the police to investigate, and, for the judges to pronounce the judgement, they would know what could be treated as terrorism' and the investigation could be done. Now this definition of 'terrorism' is there in the Unlawful Activities (Prevention) Amendment Bill. Second most important thing, Sir, is the proceeds of terrorism. Terrorism needs money. Terrorism is thriving on the funds, which it is raising when it is active. There are two things, "Sir. One, terrorism is raising the funds and using those funds, and boys are kidnapped or abducted and ransom is collected, or, a bank is looted or something of that kind is done. Now, these are the proceeds of terrorism. And, the second thing, Sir, with respect to the funds which are available to the terrorists, is the free flow of funds from other countries. Now, the world has decided that this free flow of funds, which is going to the terrorist organisations, should be stoped so that the terrorist activities can be controlled. So; this is not something against a person or an individual. This is to see that the funds do not flow, funds do not become available to the organisations or the gangs or the persons who are involved in terrorist activities and this is what we have attempted.

Sir,, there was a discussion on the availability of the evidence through the means which are not generally acceptable under the ordinary law. Mr. Jaitley was emphasising on this point that this kind of evidence could have been available to the police and to the court in order to take action against the terrorist. Now, we have seen that if any evidence becomes available through telephone, it should be used; if any evidence is available with the help of cell phone, it should be made available; if any evidence is available through computers, that evidence also should be used by the police, and we have said that, that evidence will have the evidentiary value

and that can be produced in the court of law. Now, this provision is there in order to see that in the modern world, the communication is through these electronic methods, and if the information received through these electronic methods is not allowed to be used in a court of law, it will be very difficult. That is why this provision has been specifically made in this Bill. Then, Sir, witnesses. Now, we have seen the judgements, Judgements given by the Supreme Court and High Court that the witnesses are unwilling some time to depose because they are afraid that they may not get protection. So this law provides that if there are witnesses, it would be the responsibility of the Government and the police also to provide the protection to these witnesses.

And then, international obligation. I was hearing some hon. Members saying that the world is preparing itself to face the terrorism and fight the terrorism, whereas we are receding from that and we are not doing enough for fighting the terrorism. that kind of charges were made. Sometimes, if this kind if statements are made on the floor of the House, very wrong signals go outside the world. Sir, what we have done through this law is this. Once this law has been made more comprehensive, it is specifically provided in this law that a Resolution passed by the Security Council of the United Nations declaring an organisation as a terrorist organisation will be valid in India also and we may include such organisations in the list of terrorist organisations which is maintained under the Unlawful Activities Prevention Act. So, we are not saying that we are not going to fall in line with the world as such which has decided to fight terrorism. Terrorism has not remained a local problem, Sir; it has become a nation-wide problem; it has become a worldwide problem We find terrorism in very developed countries, very weak countries and developing countries and things iike that. That is why this decision has been taken. Moreover, we have decided that if any terrorist activity is carried on by the terrorist in India which has an effect in other countries that will also become punishable in India. So, let us not say on the floor of the House that we are not going with other countries of the world which have decided to fight the menace of terrorism. And why this has to be done, Sir, is because this has become worldwide phenomena. This phenomenon is using sophisticated weapons; this phenomenon is using sophisticated travel facilities; in this phenomenon, they are using most sophisticated technologies; and in this phenomenon funds are flowing from one place to the other palce. Not only that, but

under this phenomenon, terrorist organisations the world over are also talking to each other, and saying that they will help each other and, that is why, this kind of provision has been made here.

Now, we have taken care to see that this provision is there in the law which is on the Statute Book, so that we will be doing our best to see that the terrorism is contained and other countries are also helped.

Sir, while initiating the debate, Dr. Murli Manohar Joshiji spoke and while moving the motion for disapproval of the ordinance, he said-and I do not disagree totally with what he had said-that terrorist activities in India were increasing and why we were withdrawing this law. That was the point he was making. We are going to discuss the matter of internal security. In fact, we are in the process of discussing it. The debate is on and, on Monday, I shall be replying to this debate. But I would like to say very briefly that terrorism in Jammu and Kashmir, in North-Eastern States, and in some other States is not what it is shown to be. I am not saying that it is not there. But I am saying that the situations in the States have improved. In Jammu and Kashmir, the situation has improved. I think, it was only yesterday when hon. Defence Minister was replying to questions which were put to him on infiltrations taking place from Pakistan to India. He gave some statistics and figures. The hon. Minister was asked as to how he had come to the conclusion. When he said that on the basis of the information given by the Home Ministry, he was telling the House that 60 per cent of the infiltration had declined in Jammu and Kashmir. And the question was .asked as to how he came to this conclusion. We are using some methods of calculating the number of infiltrators now. The same method was used in the past and the same method is being used now also. This is not a secret. The meassages are intercepted and information is collected by different agencies. Then the information available with the different agencies is compared, and then there are some other methods of using it. The figures which are collected by different agencies are compared and then they come to the approximate estimates of the fact which is existing over there. The situation in Jammu and Kashmir is improving. Hon. Prime Minister visited the State. He spoke to many people there, to elected members, to representatives of people, to academicians, to lawyers, to people, who were working in fields and factories and in shopes, and some others. He did not only go there, but he heard them. He tried to understand them and then he gave a big package. He said that it was not

a package, but it was a plan. And I am sorry to say that one statement was made by somebody हमें क्या भीख दे रहे है?I am really sorry to say that that should not have been said. गवर्नमेंट ऑफ इंडिया किसी को भीख नहीं देती है। गवर्नमेंट ऑफ इंडिया जो भी देती है, लोगों का है और लोगों को ही देती है। जो पैसा उनको दिया है, जम्मू और कश्मीर के लोगों का भी उसके ऊपर हक है। हमने तुम्हारा ही तुम्हारा ही तुम्हें दे दिया है और जरूरत थी, बोलकर दिया है,लोगों की मांग थी, बोलकर दिया है। पीने के पानी की मांग , इरीगेशन की मांग, पॉवर की मांग, सड़क की मांग, दवाखाने की मांग, स्कूल की मांग थी। प्राइम मिनिस्टर साहब के जाने के बाद, उनके सामने ये बाते कहने के बाद, वे भी अगर हां नहीं कहें तो यह बुरी बात है। उन्होने दिया मगर वह जो अच्छा काम किया, जिसकी वजह से लोगों के दिल में थोड़ी सी राहत पैदा होती थी, उसको कह दिया कि "भीख नहीं हम चाहते"। यह हमें अच्छा नहीं लगा। Sir, I would like to appeal, very humbly, to those people who have made this statement, to avoid making such statements. We are not giving any *bheekh*. Those moneys are not coming from the pockets of the Home Minister or from any other Minister's pocket for that matter. This is people's money given to the people, but it should not be represented in this fashion. What we are trying to do in Jammu and Kashmir is that our Army is alert, our defence, the paramilitary forces are alert, State police is alert, the Government is alert, even the political parties are alert and the people are alert and they do want peace and that is why the fence is constructed over there. That is why the situation is improving. On the North-East also,! would like to very briefly say and I will give statistics... *(Interruptions).*

SHRI ROBERT KHARSHIING: The hon. Minister has spoken over 30 minutes. We do not know how long will he continue?

SHRI SHIVRAJ V. PATH: Sorry. I think either you are bored or you don't like my statement. Sir, as far as North-Eastern States are concerned, I am going to speak on Monday and I will give the statistics of the incidents that have taken place, statistics of the killings that have taken place, statistics of the arms that are collected, statistics of the persons who are arrested and all those things. And I am happy to report to this House that the situation in the North-Eastern States also has improved. Manipur was talked and discussed. Manipur was discussed in many ways and they said that Manipur is burning and I had to ask them why do you say tha Manipur is burning. I did ask them that Government of India or the State Government did not fire a bullet against anybody. The State Government

did not arrest people and put them behind bars. The State Government, as well as, the Union Government did talk to the people who had some misapprehensions in their minds and then did persuade them to reconsider their points of view. When the hon. Prime Minister went there they said that this law should be amended and some said that this law should be repealed. He said let us have a look at it and a Committee has been constituted and the Committee is looking into it. The situation in the North-Eastern States—Arunachal Pradesh, Nagaland, Manipur, Meghalaya and Mizoram— has improved. I am not saying that nothing is happening there, but it has improved and I will show it with statistics when I speak on that. As far as Naxalites are concerned, Sir, well, the statistics are not satisfactory. Statistics does show that the Naxalite activities are increasing. But when we carefully examine as to where these Naxalite activities are increasing, I would like to give this information to these hon. Members of the House that the Naxalite activity in Andhra Pradesh is reduced by more than 50 per cent. This is not done with the help of gun, not with the help of the police forces or the Army, but this is done by having dialogue with them and by trying to understand their difficulties and trying to persuade and convince them. Now, the Naxalite activities in Maharashtra, Uttar Pradesh and Madhya Pradesh showed decline and doesn't show any increase...*(Interruptions)* Naxalite activities in Orissa also, excepting four other States...*(Interrutpions).*

DR. MURLI MANOHAR JOSHI: Mr. Home Minister, in Uttar Pradesh, Naxalite activities have increased. Recently in Chandauli, you see, for the first time it has happened. In my own distric of Allahabad, Naxalites are active. In the district of Sonbhadra, in the district of Mirzapur, in the district of Varanasi and Chandauli, the Naxalite activities have increased.

SHRI SHIVRAJ V. PATH: We don't come to the conclusion on the basis of isolated incidents which have gone up and down, but we take the statistics in totality. But I will speak on that later. But, Sir, I do say that the terrorist activity in India is something about which we should be careful and I am very happy to say that all the Members who spoke in this House, did say that we shall be careful. Don't lower your guard, be careful and tackle this situation with care and with imagination. Now, I am very happy that some Members did say and the last Members especially did say that you shall have to find out why this terrorist activity is there and they were *very* correct in saying tha the terrorist activities might have born on account

of poverty, might have born on account of sense of injustice that might have been there in the minds of the people who have taken to the guns. That terrorism might have been there because of unemployment, terrorism might have been there because development has not been there. But Mr. Arun Jaitley, I am sorry to say that you have diverted their real points in such a manner that we do not feel very happy about it. You said: Are you rationalising terrorism? They were not rationalising terrorism. As a matter of fact, they were putting their finger on the main reason why people feel angry and frustrated. They were not rationalising it; they were not saying that because that is there, terrorism should be allowed to persist. They were saying that if the young boys who are educated, who are in a position to work but who are not given jobs, if they are angry, the solution is not to take the gun and shoot at them. But the solution is to talk to them, persuade them and tell them that with guns, weapons and bloodshed, they will get nothing or they will get very little. But with arguments, with democratic method, you will get all that you need. This is what exactly the last speaker and other speakers were saying, and I think, we appreciate that. Sir, the Government of India's policy under the guidance and advice of the hon. Prime Minister is that we will like to talk to those people who abjure violence, and try to persuade them. Secondly, we will like to bring about economic development, which will give employment to the people, which will provide infrastructure for their upliftment. We will also like to take steps to see that there is social harmony and there is no feeling of social injustice having been inflicted on them, and at the same time, when we are doing this, we will certainly strengthen the police forces in the State, paramilitary forces with the Government and the Army also to see that when occasion arises, and nothing else works, as a last resort, in order to protect the innocent people in the society, that force will also be used as a part of duty, which the Government has to perform, and in that, we will not hesitate. But will not be our starting point. After all, those who are involved in the terrorist activities are also our brothers and sisters. They may be misguided, they may be angry. We would like to persuade them and we would not like to use the stick or the guns or the bombs against them. Rather, we would like to use our understanding, our sympathy, our affection to win them to our side. At the same time, we will do this. This is our policy and it is to achieve this objective of having development and security being provided to all the people in the country. We are taking a balanced stand. We are not taking an extreme stand, and that is why, these two Bills are there,

and these two Bills are the symbol of our balanced approach towards this problem, and I hope, the hon. Members will pass these Bills.

डा. मुरली मनोहर जोशी :सभापति महोदय, मैंने इस विधेयकों के निरनुमोदन का प्रस्ताव किया था और मैं यह समझा था कि हमारी सहयोगी श्रीमती सुषमा स्वराज ने इसके साथ-साथ एक दूसरा विचार भी सामने रख था कि इस विधेयक को सिलेक्ट कमेटी के सामने रख दिया जाए ...(व्यवधान)....

श्री सभापति :ठहरिए, ठहरिए। बोलने दीजिए।

डा. मुरली मनोहर जोशी : मुझे यह बात कहने में कोई आपत्ति नहीं है कि माननीय गृह मंत्री महोदय ने अपने वक्तव्य में बहुत-सी बातों का जिक्र तो किया और यह तो मान लिया कि आतंकवाद से हमें लड़ना है, आतंकवाद कहीं-कहीं पर बढ़ रहा है, और हमें उसकी तरफ से गाफिल नहीं होना है। मैं यह कहना चाहता हूं कि हम आपके इस उत्तर से संतुष्ट नहीं है क्योंकि यह तथ्यों से सर्वथा विपरीत है। उत्तर प्रदेश में मेरे अपने जनपद में,जहां आज तक कभी कोई नक्सलवादी गतिविधि नहीं हुई थी, आतंकवादी गातिविधि नहीं हुई थी, वहां आतंकवादी गातिविधियां बढ़ गई है। ...(व्यवधान)... बगल में मिर्जापुर और चंदौली जिले में ये घटनाए बढ़ी है और आज सवेरे मैंने जितनी घटनाएं बतायी थीं, आपने उनमें से किसी का भी खंडन नहीं किया। वहां घटनाएं नहीं हो रही है। सच तो यह है कि सारे देश में आतंकवादी समूह इकट्ठे हो रहे है। आज यह देश आतंकवाद से एक ज्वालामुखी पर बैठा हुआ है, आप इस तथ्य से इंकार नहीं कर सकते। मैं यह समझ रहा हूं कि आपने यह कहा कि हम कानून का जो उत्पीड़न है,रिगर ऑफ दि लॉ है, उसे घटा रहे है, लेकिन आप रिगर ऑफ आतंकवाद को बढ़ा रहे है, आप जनता का उत्पीड़न बढ़ा रहे है और निर्दोष व्यक्तियों की हत्या के लिये खुले रास्ते बना रहे है दूसरी बात, मुझे यह कहनी है कि आप उन लोगों को बचाना चाहते है, जिनसे पिछले चुनावों में आपके समझौते थे, वे चाहे आंध्र प्रदेश में हो, चाहे असम में हो। मैं यह बताना चाहता हूं कि आपने यह जो उत्तर दिया है, इससे कोई समाधान नहीं निकलता है, यह तथ्यों के सर्वाधिक विपरीत है और आतंकवाद को मिटाने के लिए सरकार में इच्छाशक्ति का पूर्ण अभाव है। मैं इस बात को पूरी शक्ति के साथ कह सकता हूं कि आप आतंकवाद से लड़ने मे सर्वथा असफल है और इसमें आपकी इच्छाशक्ति का अभाव है, आप उसके सामने घुटने टेक रहे हें। यह बात सर्वथा गलत है, आप कहते है कि कश्मीर में स्थिति सुधर गई है, अभी इसी नवंबर के महीने में कश्मीर में बहुत अधिक आतंकवादी गतिविधियां बढ़ी है। यह तथ्यों का सवाल है, इसलिए हम आपके इस उत्तर से ओर आपके इस कथन से यह सिलेक्ट कमेटी के सामने भी नहीं जाएगा, इस प्रकार के भ्रामक तथ्यों से आप इस देश को गुमराह करना चाहते है, इसलिए हम सदन से बहिर्गमन करते है।

(इसके बाद कुछ माननीय सदस्य सदन से बाहर चले गए)

श्री शिवराज वी. पाटिल :सभापति जी, वे बहिर्गमन कर रहे है, इसके बाद भी मैं दो वाक्यों में इतना कहूंगा कि वे यहां पर आए, चर्चा में हिस्सा लिया, इसका हमें बड़ा हर्ष है। दूसरा हमारा यह कहना है कि वे बहिर्गमन कर रहे है, अगर नहीं करते तो अच्छा होता।

MR. CHAIRMAN. First, I shall put the Resolution relating to Prevention of Terrorism (Repeal) Ordinance, 2004 (No. 1 of 2004) moved by Dr. Murli Manohar Joshi to vote. The question is:

"That this House disapproves the Prevention of Terrorism (Repeal) Ordinance, 2004 (No. 1 of 2004) promulgated by the President on the 21st September, 2004."

The motion was negatived.

MR. CHAIRMAN: Now, I shall put the motion moved by Shri Shivraj V. Patil to vote: The question is:

'That the Bill to repeal the Prevention of Terrorism Act, 2002, as passed by Lok Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill. In clause 2, there is one amendment by Shri Ram Jethmalani. He is not present.

Clauses 2 and 3 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SHIVRAJ V. PATIL: Sir, I beg to move:

'That the Bill be passed."

The question was put and the motion was adopted

MR. CHAIRMAN: Now I shall put the Statutory Resolution relating to the Unlawful Activities Amendment (Prevention) Ordinance, 2004 to vote. The question is:

"That this House disapproves the Unlawful Activities (Prevention) Amendment Ordinance, 2004 (No. 2 of 2004) promulgated by the President on the 21st September, 2004".

The motion was negatived

MR. CHAIRMAN: I shalll now put the motion moved by Shri Shivraj Patil to vote. The question is:

"That the Bill further to amend the Unlawful Activities (Prevention) Act, 1967, as passed by Lok Sabha, be taken into consideration.

The motion was adopted

MR. CHAIRMAN: I shall now take up clause-by-clause consideration of the Bill.

Clauses 2 and 3 were added to the Bill.

MR. CHAIRMAN: Now I shall put clause 4 to vote. There are three amendments by Shri Ram Jethamalani. He is not present.

Clause 4 was sdded to the Bill

Clauses 5 and 6 were added to the Bill

MR. CHAIRMAN: I shall now take up clause 7. There are six amendments-amendment Nos. 1 to 4 by Shri R. Shunmugasundaram and two by Shri Ram Jethmalani. Mr. Shunmugasundaram, are you moving these amendments.

(Clause 7-Substitution of new Chapters and Schedule for Chapter IV)

SHRI R. SHUNMUGASUNDARAM (Tamil Nadu): Yes, Sir, I move:

1. That at page 8, line 48, *for* the word and figure "section 36" the words "this Act" be *substituted.*

2. That at page 9, *after* line 6, the following sub-clauses by *inserted,* namely:-

"(4) Without prejudice to the other provisions of the Act, any Review Committee constituted under sub-section (1), shall review all cases registered under this Act as to whether there is *prima facie* case for proceeding against the accused thereunder and such review shall be completed within six months from the

date of receipt of case files including the sanction order, by the Review Committee and where the Review Committee is of the opinion that there is not *prima facie* case for proceeding against the accused, then the investigation shall be closed forthwith.

(5) The Review Committee constituted under section (1) shall, while reviewing cases, have powers of a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely:-

(a) discovery and production of any document;

(b) requisitioning any public record or copy thereof from any court or office.

(6) No order of sanction obtained under this Act is valid until such time the review under sub-section (4) is completed.

3. That at page 11, *for* lines 8 to 14, the following be *substituted,* namely:-

"45. No court shall take cognisance of any offence under this Act except with the previous sanction of the Central Government or any officer authorized by the Central Government in this behalf."

4. That at page 12, *after* line 3, the following sub-clause be *inserted* namely:-

"(c) any police officer who exercises powers corruptly or maliciously, Knowing that there are no reasonable grounds for proceeding under this Act, shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

(d) if the court trying the offence under this Act is of the opinion that any person has been corruptly or maliciously proceeded against under this Act, the Court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or Government, as may be specified in the order."

Sir, my purpose for bringing these amendments is to get an assurance from the Government that the provision for a Review Committee which was

provided in the previous Act should also be incorporated in the present Bill because

MR. CHAIRMAN; Do you want to withdraw your amendments?

SHRI R. SHUNMU6ASUN0ARAM: Yes, Sir, I just want to have an assurance from the hon. Minister that.....

SHRI SHIVRAJ V. PATH: Sir, there are some points which have been made by the hon. Members on the floor of the House. One of the points was that if any terrorist is given protection, instead of voluntary protection it should be intentional protection. It was suggested by Sartaji. Her point as well as the point suggested by Shri Shunmugasundaram is concerned, we will consider it carefully. We do think that we are right, but since you have made that point very forcefully, we will look into it and see what can be done at a later stage.

SHRI R. SHUNMUGASUNDARAM: It was only to ensure that there is no further misuse as was done in the case of Shri Vaiko. With these words, I withdraw my amendments. *(Interruptions).*

SHRI N. JOTHI: Unnecessarily, he is mentioning it. *(Interruptions).*

MR. CHAIRMAN: Are you withdrawing your amendments?

SHRI R. SHUNMUGASUNDARAM: Sir, I withdraw the amendments, but not my remarks regarding Shri Vaiko.

Amendment Nos. 1 to 4 were, by leave, withdrawan

Clause 7 was added to the Bill

Clause 8 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI SHIVRAJ V. PATH: Sir, I move:

'That the Bill be passed."

The question was put and the motion was adopted.

श्री सभापति :सदन की कार्यवाही कल प्रात: काल 11 बजे तक के लिए स्थगित की जाती है।

The House then adjourned at forty-one minutes past eight of the clock, till eleven of the clock on Friday, the 10th December, 2004.